TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 219.

THE TRAVELERS' INSURANCE COMPANY, PLAINTIFF IN ERROR,

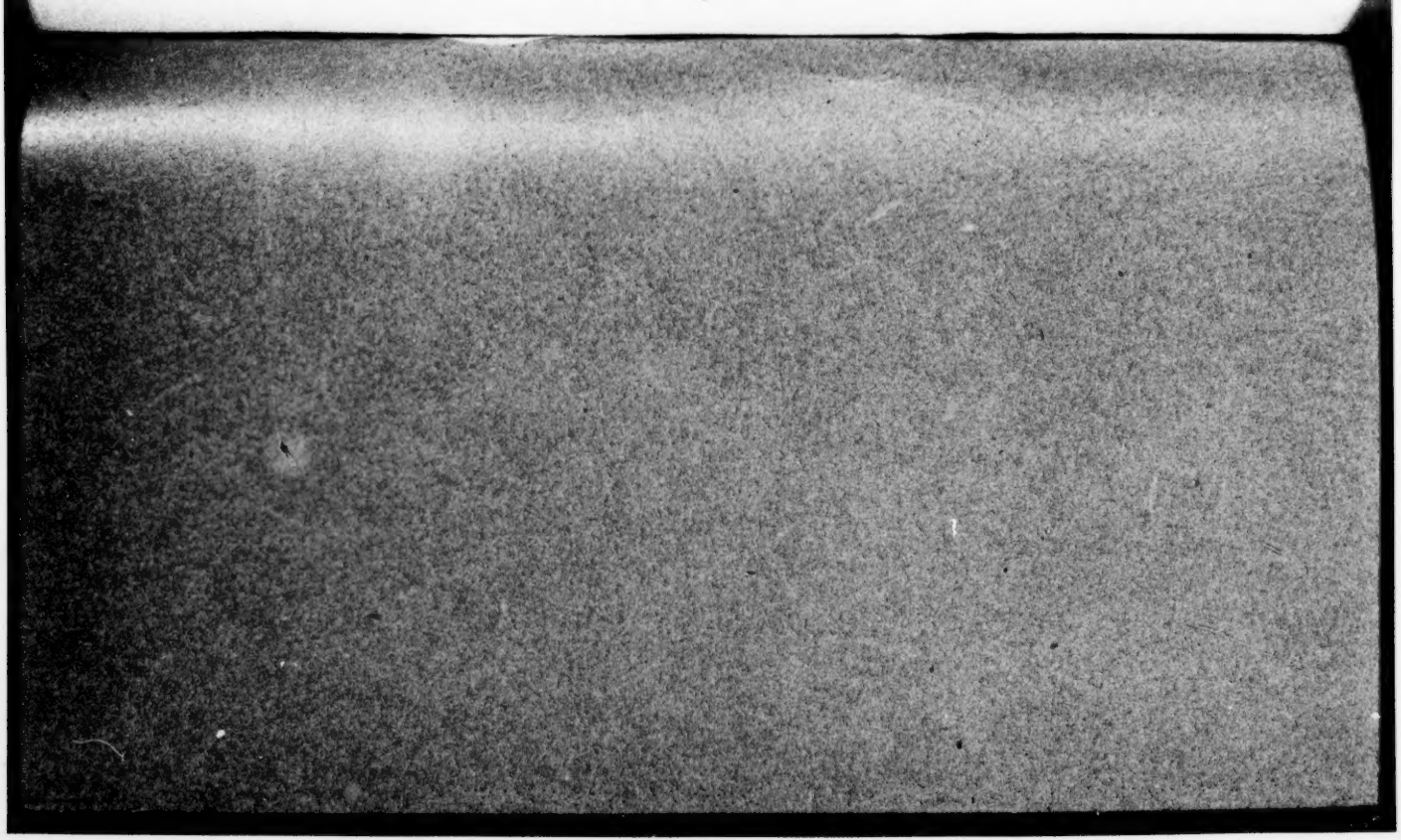
vs.

THE STATE OF CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

FILED DECEMBER 31, 1900.

(18,008.)



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SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 1, 1901.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of errors of the State of Connecticut, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of errors of the State of Connecticut before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Travelers' Insurance Company, defendant and plaintiff in error, and the State of Connecticut, plaintiff and defendant in error, where was drawn in question the validity of a statute of or the authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of said The Travelers' Insurance Company, plaintiff in error, as by its complaint appears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid to the Supreme Court of the United States together with this writ, so that you have the same at Washington on Friday the fourth day of

2 January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the sixth day of December, 1900.

[Seal of Circuit Court, Connecticut.]

E. E. MARVIN,
Clerk of the United States Circuit Court
for the District of Connecticut.

Allowed by—
CHARLES B. ANDREWS,
Chief Justice of the Supreme Court of
Errors of the State of Connecticut.

3 In the Supreme Court of Errors of the State of Connecticut.

THE STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Know all men by these presents that we, The Travelers' Insurance Company of Hartford, Connecticut, principal, and J. G. Batterson, S. C. Dunham, C. G. Munyan, all of Hartford, Connecticut, sureties, are held and firmly bound unto the State of Connecticut

in the penal sum of ten thousand dollars, to be paid to the said State of Connecticut; for which payment, well and truly to be made, we bind ourselves, and each of us and each and every of our several heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this 4th day of December, 1900.

Whereas the above-named, The Travelers' Insurance Company, has prosecuted a writ of error to the United States Supreme Court to be holden at Washington, to reverse the judgment rendered in the above-entitled suit in said court, by the judges of the supreme court of errors of the State of Connecticut.

Now therefore, the condition of this obligation is such that if the above-named, The Travelers' Insurance Company shall prosecute said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be
4 void; otherwise the same shall be and remain in full force and virtue.

THE TRAVELERS' INSURANCE COMPANY,
By J. G. BATTERSON, *President.*
[SEAL.] JOHN E. MORRIS, *Secretary.*
J. G. BATTERSON. [L. S.]
S. C. DUNHAM. [L. S.]
C. G. MUNYAN. [L. S.]

Approved as to form and sufficiency.
CHARLES B. ANDREWS,
Chief Justice of the Supreme Court of Errors of Connecticut.

Filed Dec. 7, 1900.
GEO. A. CONANT, *Clerk.*

The above and foregoing is a true copy of the original bond on file in the office of the clerk of the supreme court of errors of the State of Connecticut, Hartford county, first judicial district.
GEORGE A. CONANT, *Clerk.*

5 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the State of Connecticut and Charles Phelps, its attorney, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of errors of the State of Connecticut, wherein The Travelers' Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles B. Andrews, chief justice of the supreme court of errors, this sixth day of December, in the year of our Lord, one thousand nine hundred.

CHARLES B. ANDREWS,
Chief Justice of the Supreme Court of Errors of Connecticut.

6 UNITED STATES OF AMERICA:

STATE OF CONNECTICUT, } ss:
County of Hartford, }

I hereby certify that I served the within citation on the within-named Charles Phelps, attorney general, of said State of Connecticut, on the 6th day of December, 1900, at the city and county of Hartford, by then and there delivering to said Charles Phelps, attorney general, personally, a true and attested copy of the within citation.

I further certify that I served the within citation on Huber Clark, secretary of the State of Connecticut, on the 6th day of December, 1900, at the city and county of Hartford, by then and there leaving at the office of the secretary of the State a true and attested copy of the within citation.

Dated at Hartford, Connecticut, this 6th day of December, A. D. 1900.

EDWIN J. SMITH, *Sheriff.*

Fees.

Copies	$1.00
Endorsements	.36
Service	.12
Travel	.50
	$1.98

7 To all people to whom these presents shall come, Greeting:

Know ye that I, George A. Conant, clerk of the supreme court of errors of the State of Connecticut, first judicial district, in and for the county of Hartford in said State, having inspected the files and records in said court in my custody, do find there remaining on file a certain record in a cause wherein The State of Connecticut was plaintiff, and The Travelers' Insurance Company, a corporation under the laws of said State, located at Hartford in said county, was defendant, in the words and figures following, to wit.

Dated at Hartford this 28th day of December, 1900.

[Seal Supreme Court of Errors, Conn.]

GEORGE A. CONANT,
Clerk of the Supreme Court of Errors of the State of Connecticut in and for the County of Hartford and First Judicial District.

8 Supreme Court of Errors, First Judicial District, March Term, 1900.

STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Defendant's Appeal from Superior Court, Hartford County.

To the sheriff of the county of Hartford, his deputy, or either constable of the town of Hartford, within said county, Greeting:

By authority of the State of Connecticut you are hereby commanded to summon the Travelers' Insurance Company, a corporation under the laws of this State, located at said Hartford, to appear before the superior court to be held at Hartford within and for the county of Hartford on the first Tuesday of December, 1898, then and there to answer unto the State of Connecticut in a civil action wherein the plaintiff complains and says:

1. The defendant is an insurance company chartered by this State and located in the town of Hartford.

2. On the first day of October, 1898, the secretary of the defendant delivered to the comptroller a sworn list of all its stockholders residing without this State on said day and the number and market value of the shares of stock of said company belonging to each, according to which list the total number of shares of defendant's stock belonging to stockholders residing without this State on said day was eighteen hundred and seventy-eight (1,878) and the market value of each share of said stock on said day was two hundred and fifty dollars ($250).

3. The defendant has never paid any part of the tax payable to the plaintiff from the defendant under the provisions of section 2 of chapter CLIII of the Public Acts of 1897, although said tax was due on the 20th day of October, 1898.

The plaintiff claims eight thousand dollars ($8,000) damages.

Of this writ with your doings thereon make due return.

Dated at Hartford, Connecticut, this 19th day Novem-, 1898.

EDWARD D. ROBBINS,
Justice of the Peace.

9 HARTFORD COUNTY, *ss:*

HARTFORD, CONN., *November* 22, 1898.

Then and there, I left a true and attested copy of this writ, summons, and complaint, in the hands of John E. Morris, secretary of The Travelers' Insurance Company, the defendant corporation.

Attest: S. P. AGNEW, *Constable.*

Fees.

Copies	1.50
End	.24
Service	.12
Travel	.40
	$2.26

Superior Court, Hartford County, January 4, 1899.

STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Answer.

1. A copy of the return made by the secretary of the defendant, referred to in paragraph 2 of the complaint is hereto annexed and marked Exhibit "A."

2. The capital stock of the defendant is represented by ten thousand (10,000) shares, and, on the 1st day of October, 1898, eight thousand two hundred and one (8,201) shares were owned by shareholders resident in the State of Connecticut, and one thousand seven hundred and ninety-nine (1,799) shares were owned by
10 shareholders resident without this State, and in other States of the United States.

3. All of said shareholders were, on the 1st day of October, 1898, citizens of the United States, and citizens of the several States wherein they respectively reside.

4. The defendant, on the 1st day of October, 1898, had investments in real estate amounting to $1,778,662.05, upon all of which real estate the defendant was assessed and paid taxes.

5. Said real estate, on said 1st day of October, constituted the entire value of said capital stock in excess of $72.13 per share.

6. Chapter CLIII of the Public Acts of 1897 provides for a tax, which is in substance a tax against each of the non-resident shareholders of the defendant, to be paid by the defendant in behalf of said non-resident shareholders.

7. Under the provisions of said act, the taxable value of said stock, held by the non-resident shareholders of this defendant, on the 1st day of October, 1898, to wit, two hundred and fifty dollars ($250) per share, was largely in excess of the taxable value of the stock of the defendant owned by shareholders resident in this State as aforesaid, and the amount thereby required to be paid by said non-resident shareholders as a tax upon each share was largely in excess of the amount per share required to be paid as a tax by the resident shareholders aforesaid.

8. Under the statutes of this State, the assessable value of
11 the shares of stock held by resident shareholders of the defendant, on the 1st day of October, 1898, was determined by deducting from the market value of said shares, to wit, two hundred and fifty dollars ($250) a share, that part of the capital of the defendant invested as aforesaid in real estate; and under the provisions of chapter CLIII of the Public Acts of 1897, the assessable value of the stock held by non-resident shareholders of the defendant on said date was the market value of said stock, to wit, two hundred and fifty dollars ($250) a share, and said non-resident shareholders of the defendant were entitled to no deduction therefrom or exemption

thereon by reason of said investments in real estate, and would thereby be compelled to pay a tax upon each share largely in excess of the amount required to be paid by the resident shareholders aforesaid.

Wherefore the defendant claims that the statute law under which the tax suit sued for in this action is imposed upon the shares of stock held by non-resident shareholders of this defendant is in violation of the 2d section of article IV of the United States Constitution and of the fourteenth amendment to said United States Constitution, in that it is discriminating, unequal, and unjust, and withholds from the assessed valuation of the stock of non-resident shareholders of the defendant the exemption given by the statutes of this State to the resident shareholders of this corporation in the assessed valuation of the shares of the same stock, and requires non-resident shareholders to pay a tax upon each share of stock largely in excess of the amount required to be paid thereon by resident shareholders.

THE TRAVELERS' INSURANCE COMPANY,
By ROBINSON & ROBINSON,
WILLIAM R. MATSON, *Its Attorneys.*

12 EXHIBIT "A."

(Annexed to paragraph 1 of answer.)

I, John E. Morris, secretary of the Travelers' Insurance Company, hereby certify that the list hereto attached is a list of the stockholders of the Travelers' Insurance Company residing without the State of Connecticut on the first day of October, 1898, with the number of shares of said stock then belonging to each, the market value of each share of stock on said day being two hundred and fifty dollars.

All the persons whose names are set forth in said list are citizens of the United States residing without the State of Connecticut, in other States and Territories of the United States, except Sarah S. D'Aubigne and Annie E. Huber, who are represented by agents, and whose citizenship is to me unknown.

This list is submitted in conformity with the requirements of section 3916 of the General Statutes of the State of Connecticut, which statute, as amended by chapter CLIII of the Public Acts of 1897, is, by this company and by its shareholders, deemed to be unjust, unconstitutional and void, and payment of taxes under said statute is now being resisted in the courts, and will again and hereafter be resisted.

(Signed) JOHN E. MORRIS.

To the comptroller of the State of Connecticut.

Sworn to by John E. Morris, subscriber of the foregoing certificate, this 10th day of October, A. D. 1898, at Hartford, Connecticut, before me.

(Signed) SYLVESTER C. DUNHAM,
Notary Public.

13 Stockholder.	No. shares.
Allen, Risley W.	24
Ashley, Edith M.	6
" D. D.	6
" Homer	8
Bunce, Francis M.	27
" William G.	10
" Mary E.	27
" Alice E.	50
Baker, William A.	40
" Catherine P.	7
Bronk, John P.	7
Benoit, Moses A.	8
Carpenter, J. C.	10
Clark, Dr. William B.	4
Chace, Carrie H.	5
Conant, Emily H.	5
Collins, Chas. O.	12
Clark, Chas. L. R.	5
D'Aubigne, Sarah S.	25
Dean, Mrs. Olive J.	23
Eastman, Martha A.	32
Foster, Chas. G.	4
Freeman, Harriette F.	14
Fitts, Geo. H.	5
Goodwin, Jas. J.	8
Goodrich, E. E.	7
Goodwin, Rev. Jas.	8
Hendricks Bros.	25
Forward	412
14 Brought forward	412
Horton, B. W.	4
Holton, Jane L.	57
Huber, Annie E.	20
Holton, Geo. D.	8
Hammond, Martha P.	20
Hoskins, Mrs. Isabel	4
Hubbard, Mrs. Georgiana A.	140
Hotchkiss, Chas. B.	4
Harwood, Minor F.	10
Ives, Lawson C. est.	20
Johnson, Emma A.	11
Jewell, Margaret H.	30
Kellogg, Isabella M.	12
" Clara M.	4
Kendrick, Mary E.	13
Lewis, Enoch	100
Landon, Francis G.	5
" Edward H	6

Landon, H. H.	4
" Mary G.	8
Moore, Geo. D.	24
Merrill, T. B.	50
McEwan, William	24
Moody, Laura A.	40
Martin, Mary B.	5
Nolan, John H.	34
Norton, John H.	2
	1,071
15 Brought forward	1,071
Pullman, Geo. M. est.	50
Perkins, Frances W.	7
Padelford, Maria L.	166
Pirtle, John B.	26
Pitkin, Wm. H.	9
" James S.	9
Porter, Henrietta	25
Park, Geo. M.	3
Prior, Charlotte M.	12
Riley, Lucy M.	1
Riddle, Chas. F.	4
" Althea W.	8
Russell, Elizabeth H.	43
" Wm. H.	20
Smith, John W.	23
" Thomas M. est.	50
Scofield, J. M. est.	4
Sawyer, Geo. C.	20
Shaw, Thomas A.	40
" Maria P.	14
Smith, Thomas S.	1
Scudder, Mary B.	3
Sanger, Mrs. Susan E.	12
Strong, Wm. H. g'd'n.	37
Sawin, Mabel F.	6
Spang, Rosalie	125
	1,799
16 Brought forward	1,799
Valentine, Mrs. Eliza W.	25
White, Charles est.	40
" Julia D.	7
Ward, Harriet S.	3
Warner, Frank C.	8
Way, John L.	5
	1,887

Filed Jan. 4, 1899.
J. LINCOLN FENN, *Assistant Clerk.*

17 Hartford County Superior Court, May 3, 1899.

STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Plaintiff's Motion to Strike Out, etc.

The plaintiff moves–

1. That paragraphs 6, 7 and 8 of the answer be each struck out as consisting merely of allegations of law and not of allegations of fact.

2. That the last paragraph unnumbered beginning "Wherefore the defendant claims" be struck out as containing no allegations of fact, but merely a matter of argument and propositions of law.

3. That if paragraph 7 be not struck out as hereinabove moved, the defendant be required to make the allegations thereof more specific by stating the amount paid by each of said resident shareholders as a tax upon each share of the stock held by him.

4. That the defendant be required to make the allegations of paragraph 4 more specific and less ambiguous by stating whether by the amount of the defendant's investment in real estate is meant the amount which such real estate originally cost the defendant, or the amount of its market value upon said day, or the amount at which it stood upon the books of the defendant upon said day, and by stating each of the pieces of real estate owned by the defendant on said day together with all data to be alleged about said real estate concerning each piece thereof.

18 5. That the defendant be required to make paragraph 5 more specific and less ambiguous by alleging such facts as will show the relation of the assets of the defendant and the aggregate value thereof and of defendant's capital stock to defendant's real estate and the value thereof.

6. That paragraph 1 of the answer and Exhibit A therein referred to and annexed to the answer be struck out as being neither an admission nor denial of any allegation of the complaint.

THE STATE OF CONNECTICUT,
By CHARLES PHELPS,
Attorney General.

Filed May 3, 1899.

J. LINCOLN FENN,
Assistant Clerk.

Paragraphs 1, 2 & 5, and so much of par. 4 to word "together" in 9th line, granted. Pars. 6 and 3 denied.
May 23, '99.

G. W. WHEELER, *J.*

19 Superior Court, Hartford County, June 27, 1899.

THE STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Substituted Answer Filed in Conformity with the Rulings of the Court upon Plaintiff's Motion for Specific Statement, etc.

Defendant amends the answer by substituting therefor the following:

1. A copy of the return made by the secretary of the defendant, referred to in paragraph 2 of the complaint, is hereto annexed and marked Exhibit "A."

2. The capital stock of the defendant is represented by ten thousand (10,000) shares, and, on the 1st day of October, 1898, eight thousand two hundred and one (8,201) shares were owned by shareholders resident in the State of Connecticut, and one thousand seven hundred and ninety-nine (1,799) shares were owned by shareholders resident without this State, and in other States of the United States.

3. All of said shareholders were, on the 1st day of October, 1898, citizens of the United States, and citizens of the several States wherein they respectively resided.

4. The statute of the State of Connecticut relating to the taxation of the stock of the defendant owned by said resident stockholders on the 1st day of October, 1898, to wit, chapter LXIII of the Public Acts of 1889, is as follows:

Section 3836 of the General Statutes is hereby amended to read as follows:

"Shares of the capital stock of any bank, national banking association, trust, insurance, turnpike, bridge, or plank road company, owned by any resident of this State, shall be set in his list at its market value, in the town in which he may reside; but so much of the capital of any such company as may be invested in real estate, on which it is assessed and pays a tax, shall be deducted from the market value of its stock in its returns to the assessor."

5. The statute of the State of Connecticut relating to the taxation of the stock of the defendant owned by said non-resident
20 shareholders on the 1st day of October, 1898, to wit, section 2 of chapter CLIII of the Public Acts of 1897, is as follows:

"Section 3916 of the General Statute- is hereby amended to read as follows: The cashier or secretary of each corporation whose stock is liable to taxation, and not otherwise taxed by the provisions of this title, shall, on the 1st day of October, annually, or within ten days thereafter, deliver to the comptroller a sworn list of all its stockholders residing without this State on said day, and the number and market value of the shares of stock therein then belonging to each; and shall on or before the twentieth day of October, annually, pay to the State one and one-half per centum of such value; and if any such cashier or secretary shall neglect to comply with

the provisions of this section he shall forfeit to the State one hundred dollars, in addition to said one and one-half per centum so required to be paid."

6. The defendant, on the 1st day of October, 1898, had investments in real estate in the following States, upon all of which real estate it was assessed and paid taxes; the number of pieces of real estate situated in each State, with the market value thereof, being annexed thereto, such values being the amount respectively at which said investments in real estate were on the said 1st day of October, 1898, carried on the books of the defendant:

States.	No. of pieces.	Value.
Connecticut	2	$137,965.81
Indiana	50	209,009.68
Illinois	24	91,539.98
Kansas	450	543,017.61
North Dakota	275	161,990.76
Wisconsin	1	780.00
Minnesota	18	87,590.59
Florida	64	255,141.12
South Dakota	8	4,568.00
Colorado	51	202,758.50
Georgia	3	31,000.00
Washington	2	40,000.00
Pennsylvania	1	7,800.00
Ohio	1	5,500.00

7. The market value of the stock of the defendant company on the 1st day of October, 1898, was $250 per share.

21 8. All of the said resident owners of said stock were assessed upon the stock owned by them respectively on the first day of October, 1898, at an assessed valuation equal to the said market value of said stock less a large deduction therefrom by reason of the company's said investments in real estate.

9. The amount per share sought to be collected from the defendant in this action as a tax upon the stock owned by said non-resident shareholders is far in excess of the amount per share paid and required to be paid as a tax by the several resident shareholders aforesaid on the stock owned by them on the said 1st day of October, 1898.

DEFENDANT,
By ROBINSON & ROBINSON AND
WILLIAM R. MATSON,
Its Attorneys.

Filed June 29, 1899.

J. LINCOLN FENN,
Assistant Clerk.

22 Superior Court, Hartford County, July 5, 1899.

STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Motion to Strike Out.

The plaintiff moves:

1. That paragraphs 4 and 5 of the substituted answer be struck out as containing no allegations of fact.

2. That paragraph 8 of the substituted answer be struck out because the action taken by the assessors of the towns within which owners of defendant's stock reside in assessing such owners upon their stock owned by them on the 1st day of October, 1898, in nowise affects the legality of the action of the State board of equalization set forth in the complaint or the right of the State to recover from the defendant as claimed in the complaint,

3. That paragraph 9 of the substituted answer be struck out because the amount per share paid and required to be paid
23 as a tax by the several resident shareholders in the towns in which they reside on the stock owned by them on October first, 1898, in nowise affects the legality of the tax sought to be collected from the defendant in this action.

THE STATE OF CONNECTICUT,
By EDWARD D. ROBBINS AND
CHARLES PHELPS, *Its Attorneys.*

Filed July 13, 1899.
J. LINCOLN FENN,
Assistant Clerk.

Paragraph 1 granted; paragraphs 2 and 3 denied.
November 24, 1899.

Superior Court, Hartford County, November 24, 1899.

THE STATE
vs.
TRAVELERS' INS. CO.

Memorandum of Decision

Upon plaintiff's motion to strike out, dated July 13, 1899.

Paragraph 1 of the motion allowed, as paragraphs 4 and 5 of the answer simply recite certain public statutes of this State which need not be pleaded. Paragraphs 2 and 3 of the motion are denied. The defendant relies upon the allegations set forth in paragraphs 8 and 9 of its answer to raise the unconstitutionality of the law in question, and to allow this motion would have the effect of not

giving it an opportunity of trying the very question it is now contending for, practically depriving it of its day in court.

RORABACK, *Judge.*

Filed November 24, 1899.
GEORGE A. CONANT, *Clerk.*

24 Superior Court, Hartford County, December 1, 1899.

THE STATE OF CONNECTICUT
vs.
THE TRAVELERS' INSURANCE COMPANY.

Demurrer to Answer.

The plaintiff demurs to the substituted answer because,

1. The answer contains no denial of the allegations of the plaintiff's complaint, and no material allegations of new matter, or matter of avoidance.

2. The tax payable by the defendant under the admitted allegations of the complaint was by law one and one-half per cent. (1½ %) on eighteen hundred and seventy-eight (1,878) shares of defendant's stock owned by its stockholders residing without this State on the first day of October, 1898, at the market value of said shares, to wit, two hundred and fifty dollars ($250) per share, so that under the admitted allegations of the complaint the tax payable by the defendant on or before October 20, 1898, amounted to seven thousand forty-two dollars and fifty cents ($7,042.50).

3. It is immaterial that the defendant had on the first day of October, 1898, investments in real estate upon which it was assessed and paid taxes, and said fact cannot affect the legality of the tax sought to be collected from the defendant in this action, or the right of the plaintiff to recover as claimed in the complaint.

4. It is immaterial at what amount the defendant's investments in real estate were on the first day of October, 1898, carried on its books.

5. It does not appear but that on the first day of October, 1898, the defendant company had assets vastly in excess of its capital and surplus, and it does not appear that any part of its capital was then invested in real estate.

6. It is immaterial that all of the resident owners of defendant's stock were assessed upon the stock owned by them respectively on the first day of October, 1898, at an assessed valuation equal to the market value of their stock less a large deduction therefrom by reason of the defendant's investments in real estate, and said fact cannot affect the legality of the tax sought to be collected from the defendant in this action, or the right of the plaintiff to recover as claimed in the complaint.

7. It is immaterial what amounts per share were paid or
25 required to be paid as taxes by the different resident shareholders of the defendant company on the stock owned by them on the first day of October, 1898, in the various counties,

towns, cities, boroughs and school districts in which they respectively resided, and the fact that such amounts happened to be less than the amount per share sought to be collected from the defendant in this action on the stock owned by its non-resident shareholders cannot affect the legality of the tax so sought to be collected, or the right of the plaintiff to recover as claimed in the complaint.

8. The valuation for taxation of defendant's stock, as well as the stock of other insurance companies and other corporations affected by the same laws, when owned by resident shareholders, is by the laws of this State made by the assessors of the towns within which such shareholders reside, and it is immaterial that such assessors have happened to assess said stock for purposes of taxation at a less value than two hundred and fifty dollars per share, and such action by them cannot affect the legality of the tax sought to be collected in this action, or the right of the plaintiff to recover as claimed in the complaint.

9. The laws of this State do not provide for any deduction from the market value of the stock of the defendant company owned by resident shareholders in assessing said stock for taxation by reason of the investments of said company in real estate.

10. The taxes required to be paid by the resident shareholders of the defendant company, as well as other insurance companies and other corporations affected by the same laws, depend upon the action of the counties, towns, cities, boroughs and school districts in which such shareholders respectively reside, and it is immaterial what taxes were required to be paid by the resident shareholders of the defendant company on defendant's stock owned by them on the first day of October, 1898, to counties, towns, cities, boroughs or school districts in which they severally resided, and the differing amounts per share so required to be paid by different resident shareholders of the defendant company cannot affect the legality of the tax sought to be collected from the defendant in this action, or the right of the plaintiff to recover as claimed in the complaint.

THE STATE OF CONNECTICUT,
By CHARLES PHELPS AND
EDWARD D. ROBBINS,
Its Attorneys.

Filed December 6, 1899.
J. LINCOLN FENN,
Assistant Clerk.

Sustained *pro forma* December 22, 1899.

26 Superior Court, Hartford County, February Third, 1900.

STATE OF CONNECTICUT
vs.
TRAVELERS' INSURANCE COMPANY, a Corporation under the Laws of This State, Located at Hartford.

Judgment.

This action by complaint claiming $8,000 damages, came to this court on the first Tuesday of December, 1898, and thence by continuance to the third day of December, 1899, when the plaintiff made and filed a demurrer to the answer.

The court having heard the parties, sustained said demurrer and found the answer insufficient, *pro forma*, on the twenty-second day of December, 1899. The defendant refused to plead over; and the cause having come to the present time, the court heard the plaintiff and finds it has sustained damages as alleged in the complaint, to the amount of seven thousand five hundred and eighty-six dollars and eighty-nine cents.

Whereupon it is adjudged that the plaintiff recover of the defendant seven thousand five hundred and eighty-six dollars and eighty-nine cents damages and sixty-three dollars and seventy-one cents costs.

By the court:

GEORGE A. CONANT, *Clerk.*

Superior Court, Hartford County, February 9, 1900.

STATE OF CONNECTICUT
vs.
TRAVELERS' INSURANCE COMPANY.

Defendant's Notice of Appeal.

Notice is hereby given that the defendant in the above-entitled cause appeals from the judgment in said cause to the supreme court of errors next to be holden at Hartford on the 1st Tuesday of March, A. D. 1900.

DEFENDANT,
By ROBINSON & ROBINSON,
WILLIAM R. MATSON,
Its Attorneys.

Filed February 9, 1900.

GEORGE A. CONANT, *Clerk.*

27 Superior Court, Hartford County, February 9, 1900.

STATE OF CONNECTICUT
vs.
TRAVELERS' INSURANCE COMPANY.

Defendant's Appeal.

In the above-entitled cause the defendant appeals from the judgment of said court to the supreme court of errors to be holden at Hartford on the 1st Tuesday of March, A. D. 1900, for the revision of the errors which it claims to have occurred in the trial thereof, and for reasons of appeal the defendant assigns the following:

(1.) Because the court erred in sustaining the plaintiff's demurrer to the substituted answer and the claims of law therein made as on file.

(2.) Because the court erred in not holding that the statute law under which the tax sought to be collected in this action was imposed is in violation of the 2d section of article IV of the United States Constitution and of the fourteenth amendment to said Constitution.

Defendant therefore prays for such relief as is provided by law in the premises.

THE TRAVELERS' INSURANCE CO.,
By ROBINSON & ROBINSON AND
WILLIAM R. MATSON, *Its Attorneys.*

I certify that the foregoing appeal was filed on the 9th day of February, 1900, and Lucius F. Robinson, Esq., of Hartford, is recognized in the sum of one hundred dollars, conditioned that the said Travelers' Insurance Company shall prosecute said appeal to effect and pay all costs therein if it shall fail so to do, and said appeal is hereby allowed.

GEORGE A. CONANT, *Clerk.*

28 Superior Court, Hartford County, February 17, A. D. 1900.

STATE OF CONNECTICUT
vs.
TRAVELERS' INSURANCE COMPANY.

I, George A. Conant, clerk of said suprerior court in and for said county, do hereby certify that the foregoing is a true copy of all the files and records in said cause, except such pleadings and papers as were withdrawn.

In testimony whereof, I have hereunto set my hand and the seal of said superior court, at Hartford in said county, this 17th day of February, A. D. 1900.

[Seal Supreme Court, Hartford County, Ct.]

GEORGE A. CONANT, *Clerk.*

29 At a supreme court of errors, holden at Hartford, in and for the first judicial district of the State of Connecticut, on the first Tuesday of May in the year of our Lord one thousand nine hundred.

Present: Hon. Charles B. Andrews, chief justice; Hon. David Torrance, Hon. Simeon E. Baldwin, Hon. Frederic B. Hall, Hon. William Hamersley, associate judges.

May Term, 1900, the 29th Day of October, 1900.

STATE OF CONNECTICUT *vs.* THE TRAVELERS' INSURANCE COMPANY, a Corporation under the Laws of this State, Located in Hartford.	On Appeal from Superior Court, Hartford County.

Judgment.

This appeal by the defendant, claiming error in the record, judgment and decisions of said superior court on questions of law arising in the trial, as may appear in the certified transcript of record on file in this court, was allowed by said superior court on February 9th, 1900, and came to this court at its March term, 1900, and thence by continuance to its May term, 1900, when the parties appeared and were fully heard.

And now this court finds that in the record, judgment and decisions of said superior court there is no error.

30 It is therefore considered and adjudged that the said judgment of said superior court be confirmed, and that the plaintiff recover of the defendant $— costs.

By the court:

GEORGE A. CONANT, *Clerk.*

All which I have caused by these presents to be exemplified, and the seal of the supreme court of errors of the State of Connecticut to be hereunto affixed, and do hereby certify that the within and foregoing is a true copy of said original files and record.

In testimony whereof I hereunto set my hand and affix the seal of said court at Hartford, in said county and State this 28th day of December 1900.

[Seal Supreme Court of Errors, Conn.]

GEORGE A. CONANT,
Clerk of the Supreme Court of Errors of the State of Connecticut in and for the County of Hartford and the First Judicial District.

STATE OF CONNECTICUT, *Litchfield County,* } *ss:*

I, Charles B. Andrews, a judge of the supreme court of errors of the State of Connecticut, do hereby certify that George A. Conant,

whose name is subscribed to the preceding exemplification,
31 is the clerk of said supreme court of errors in and for said Hartford county, being the first judicial district of said State of Connecticut, duly appointed and sworn; that the above is his genuine official signature, and that full faith and credit are due to his official act-.

I further certify that the seal affixed to said exemplification is the seal of the supreme court of errors, and that the foregoing attestation is in due form.

Dated at Litchfield this 29th day of December, 1900.

CHARLES B. ANDREWS,
Chief Justice Supreme Court of Errors, Conn.

32 The Supreme Court of the United States, October Term, 1900.

THE TRAVELERS' INSURANCE COMPANY, Plaintiff in Error,
vs.
THE STATE OF CONNECTICUT, Defendant in Error.

Assignment of Errors.

Afterwards to wit, on the sixth day of December in the year of our Lord one thousand nine hundred, at the October term for 1900 of the Supreme Court of the United States, at the Capitol in the city of Washington and District of Columbia, comes the said The Travelers' Insurance Company, plaintiff in error, by Lucius F. Robinson and William R. Matson, its attorneys, and says that, in the record and proceedings in the above-entitled cause, there is manifest error in this to wit:

(1.) Because chapter CLIII of the Public Acts of 1897 of the State of Connecticut under which the State of Connecticut is seeking to collect from the Travelers' Insurance Company taxes assessed upon shares of the capital stock of said company owned by citizens of other States than the State of Connecticut is in violation of article IV section 2 paragraph 1 of the United States Constitution in that it withholds from citizens of other States than the State of Connecticut in the valuation for assessment and for taxation of the shares of stock of the Travelers' Insurance Company owned by them a deduction therefrom allowed to owners of the shares of such stock resident
in the State of Connecticut in the valuation of their shares
33 for assessment and taxation as provided in section 3836 of the General Statutes of said State; said chapter CLIII of the Public Acts of 1897 imposing a tax which, under the decisions of the supreme court of errors of said State and by virtue of chapter 50 of the Public Acts of 1899 of said State is in substance and effect a tax against the owners of such shares resident without said State; chapter CLIII of the Public Acts of 1897, chapter 50 of the Public Acts of 1899, and section 3836 of the General Statutes of Connecticut being as follows:

Chapter CLIII.

"An act concerning special taxes on corporations.

Be it enacted by the senate and house of representatives in General Assembly convened:

Section 1. Section 3915 of the General Statutes is hereby amended to read as follows: The cashier of each national banking association in this State shall, on or before the tenth day of October annually, deliver to the treasurer of the town where it is located a sworn list, of all its stockholders residing without this State on the first day of said October, and the number of its shares then belonging to each, and the market value of such shares on that day, and shall, on or before the twentieth day of the same October annually, pay to such treasurer one and one-half per centum on such value; and any such cashier who shall not comply with the provisions of this section shall forfeit to the town where the association is located one hundred dollars, together with said one and one-half per centum so required to be paid.

Sec. 2. Section 3916 of the General Statutes is hereby amended to read as follows: The cashier or secretary of each corporation whose stock is liable to taxation, and not otherwise taxed by the provisions of this title, shall, on the first day of October, annually, or within ten days thereafter, deliver to the comptroller a sworn list of all its stockholders residing without this State on said day, and the number and market value of the shares of stock therein then belonging to each; and shall on or before the twentieth day of October, annually, pay to the State one and one-half per centum of such value; and if any such cashier or secretary shall neglect to comply with the provisions of this section he shall forfeit to the State one hundred dollars, in addition to said one and one-half per centum so required to be paid."

Approved May 13, 1897.

34 Chapter 50.

"An act amending an act relating to the stock of corporations.

Be it enacted by the senate and house of representatives in General Assembly convened:

Section 1. Section 1923 of the General Statutes is hereby amended to read as follows: When not otherwise provided in its charter, the stock of every corporation shall be personal property, and be transferred only on its books, in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock owned by any person therein, for all debts due to it from him; and any corporation desiring to enforce such lien may give notice to such stockholder, his executor or administrator; and if there be none, his heir-at-law, that unless he shall pay his indebtedness to said corporation within three months it will sell said stock; and such corporation may prescribe by its by-laws the manner of giving notice required by this section, but the notice of sale shall in no case be given until the liability has become fixed.

Sec. 2. This act shall take effect from its passage."

Approved April 6, 1899.

"SECTION 3836. Shares of the capital stock of any bank, national banking association, trust, insurance, investment, turnpike, bridge, or plank road company, owned by any resident in this State, shall be set in his list, at its market value in the town in which he may reside; but so much of the capital of any such company as may be invested in real estate, on which it is assessed and pays a tax, shall be deducted from the market value of its stock, in its return to the assessors."

(2.) Because chapter CLIII of the Public Acts of 1897 of the State of Connecticut is in violation of article IV section 2 paragraph 1 of the United States Constitution in that it requires citizens of other States than Connecticut to pay taxes upon shares of stock of the Travelers' Insurance Company owned by them upon an assessed valuation equal to the market value of said shares, and section 3836 of the General Statutes of Connecticut under which such stock is assessed and taxed against residents of Connecticut requires such residents to pay taxes upon an assessed valuation equal only to the market value of said stock less a large deduction therefrom by reason of the real estate owned by the company and upon which it is assessed and pays taxes.

35 (3.) Because chapter CLIII of the Public Acts of 1897 of the State of Connecticut is in violation of article IV section 2 paragraph 1 of the United States Constitution in that it requires citizens of other States than Connecticut to pay taxes upon shares of the stock of the Travelers' Insurance Company owned by them far in excess of the taxes required to be paid by residents of Connecticut upon shares of such stock owned by such residents.

(4.) Because the court held that chapter CLIII of the Public Acts of 1897 of the State of Connecticut under which the State of Connecticut seeks in this action to collect from the Travelers' Insurance Company taxes assessed upon shares of the capital stock of said company owned by citizens of other States than Connecticut, is not in violation of the United States Constitution, and particularly article IV section 2 thereof.

(5.) Because chapter CLIII of the Public Acts of 1897 of the State of Connecticut is in violation of the fourteenth amendment of the United States Constitution and abridges the privileges and immunities of citizens of the United States in that such statute denies to citizens of the United States residents without the State of Connecticut an exemption granted to residents of Connecticut in the assessment for taxation of the shares of the capital stock of the Travelers' Insurance Company.

(6.) Because chapter CLIII of the Public Acts of 1897 of the State of Connecticut is in violation of the fourteenth amendment

36 to the United States Constitution and is discriminating, unequal, and unjust in that it requires the Travelers' Insurance Company to pay taxes upon an assessment of the shares of its capital stock made at a greater valuation than the valuation for assessment of the shares of such stock owned by stockholders of said company resident in said State and under a different rule than that

governing the assessment of shares of such stock owned by stockholders of said company resident in said State.

(7.) Because the court held that chapter CLIII of the public acts of 1897 of the State of Connecticut under which the State of Connecticut seeks to collect from the Travelers' Insurance Company taxes upon shares of its capital stock is not in violation of the United States Constitution and particularly the fourteenth amendment thereto.

(8.) Because the court erred in affirming the judgment of the superior court of the State of Connecticut in favor of the State of Connecticut against said The Travelers' Insurance Company and in sustaining the demurrer of the State of Connecticut to the answer of said The Travelers' Insurance Company as in the record and proceedings aforesaid appears.

Wherefore the said The Travelers' Insurance Company prays that the judgment aforesaid may be reversed, annulled and held for nothing and that it, The Travelers' Insurance Company, may be restored to all things which it has lost by occasion of the said judgment.

LUCIUS F. ROBINSON,
WM. R. MATSON,
Attorneys for Plaintiff in Error.

37 Supreme Court of Errors, First Judicial District, Hartford, May Term, 1900.

THE STATE
vs.
TRAVELERS' INSURANCE CO.

Argued May 1st; decided October 17th, 1900.

38 HAMERSLEY, *J.*:

The defendant claims that the statute law under which the tax sought to be collected in this action was imposed violates the Constitution.

For the purpose of ascertaining our fundamental law the State and national constitutions must be regarded as substantially one ordinance enacted by that body in whom the supreme sovereignty within our limits, is vested.

The reasons urged in support of the defendant's claim, if sound, are really a challenge to the validity of methods of taxation that have existed in this community for 250 years. Our taxation has always been based on the power and duty of the General Assembly, being responsible for the performance of such duty not to the courts but to its constituency, to determine on grounds of public policy the methods by which a fair and politic distribution of the stress of taxation may be accomplished.

Every line of objection raised by the defendant must invoke for its final support the claim urged in its brief that the aphorism, "Taxation shall be uniform and equal" is contained in the Consti-

tution and operates as a limitaton on the power of taxation which this court is bound to enforce. The case therefore practically turns on the existence and authority of such a maxim.

The alleged maxim, in order to control our action, must be found either in some express provision or clear implication of the Constitution. No court can directly set aside an act of the legislature, and the power to indirectly invalidate legislation is one which in the nature of things can exist in the judicial department only under a constitution in the American sense, and is limited by the authority from which it is derived; it is not a power of veto or revision,
39 but purely the judicial power of interpretation. This judicial power is bottomed on the absolute supremacy of the law. In the United States the supreme law is the expressed will of that ultimate sovereignty which has been assumed by the people. All legislation as well as the action of all departments of government must conform to "the supreme original will of the people" as expressed in the constitutions which "form the fundamental and paramount law." Marbury *v.* Madison 1 Cranch 137, 176; Davison *v.* Champlin 7 Conn., 244, 246; Opinion of the Judges 30 Conn., 593.

Since the Supreme Court of the U. S. in the case of Marbury *v.* Madison first announced that the judicial department is authorized to declare a legislative act void, if the rights of parties are affected by a clear conflict between the supreme and subordinate law, that power has been used without question. This is an exercise of the judicial power of interpretation, but an application of that power which was wholly novel. In the interpretation of a settled principle of jurisprudence its meaning as applicable to existing facts may sometimes be made clear by illustrations drawn from universal moral rules that in a way account for all law, and in the interpretation of a statute, historic facts, political and social conditions, may sometimes make clear a doubtful meaning; so similar considerations may at times be proper and necessary in finding the very essence of constitutional limitations. Norwalk St. R'y Appeal 69 Conn., 576, 583; State *v.* Conlon 65 Conn., 478, 489; *In re* Clark 65 Conn., 17, 37 *et seq.* Yet the indiscriminate use in the discussion of these questions of arguments drawn from such sources has undoubtedly induced some practical confusion between the judicial applica-
40 tion of a broad principle stated and the judicial enactment of a principle not stated. The distinction however is radical. One is interpretation, the other is usurpation.

We deem it therefore immaterial whether or not the apothegm "Taxation should be equal and uniform" is sound and ought to be incorporated in our constitution, for whatever our view as to this might be, we should be compelled to hold that unequal taxation by the legislature might be valid, if the sovereign who enacted our fundamental law has seen fit to grant the power of taxation and refused to impose such a limitation on its exercise.

Passing then to the real question—Is there in our fundamental law any express provision or clear implication from provisions therein contained that "taxation shall be uniform and equal"?

There can be no claim that such a mandate is directly ex-

pressed either in the State or national Constitution. Express provisions of that nature may be found in the local constitutions of many States; and have proved a source of practical difficulties for legislatures and courts. They are not found in our own, which assumes that experience has taught that the power of taxation cannot safely be cabined within a theory of uniformity and equality. Taxes to be both uniform and equal affecting each inhabitant in proportion to his ability to contribute, can only be devised by a government unhampered by the limitations of humanity. With the complications of civilized society, the stress of taxation is not, and cannot be confined to the individual who pays the tax, its ramifications are widespread, and hidden. This and other considerations forbid the assertion of any specific theory as essential to just taxation. It is true that it is the interest of every government that the burden of taxation should be distributed fairly
41 and equally, and that it is the duty of the department in which the taxing power may be vested to honestly use its best judgment to secure such result. If this is what is meant by uniformity and equality being of the essence of taxation the saying is correct although unfortunately expressed. But the assertion that a violation of the legislative duty of fair and equal taxation under a Constitution like our own, inherently involves a violation of that Constitution, by an overstepping of the limits of legislative power, is not true. If a broad expression of the above principle is desirable, it may more properly be stated thus:—Justice and equity in the stress of the whole burden is inherent in taxation and the power of accomplishing that result is vested with the power of taxation in the legislature, subject only to restrictions specified in the grant of that power and to the general limitations placed by the Constitution on the exercise of all legislative power. But it is unwise to limit the principle by the terms of any authoritative formula.

Is this maxim necessarily implied from any provisions of our fundamental law? Unless the vague notion of a higher law is claimed as a constitutional provision we are pointed to no provision nor to any combination of provisions from which it is claimed that such a maxim is a necessary implication. To controvert a claim which rests on no definite propositions is ordinarily like fighting the air. But fortunately in this case the task of proving a negative is not difficult. The provisions of our Constitution exclude the possibility of a limitation of legislative power by an implied mandate that taxation shall be equal and uniform.

It is impossible to study the development of our law dur-
42 ing two and a half centuries, without reaching the certain conclusion that the rights of the people to tax themselves through the representatives in the General Assembly has always been held in reverence, and is distinctly secured by the Constitution; that the duty to exercise the power of taxation wisely and only for the public good is a legislative duty for the performance of which the General Assembly is responsible to its constituency; that the power of considering the conditions of population or property, the theories and maxims of political economy or moral philosophy which

may affect taxation and of determining what on the whole is a wise and fair mode of distributing the burden, is a purely legislative power and that the judicial department is by express provision of the Constitution forbidden to exercise that power. Such provisions are incompatible with the existence in our State constitution of any maxim of uniformity and equality in taxation to be defined by the court and employed in controlling the General Assembly in the performance of its legislative duties and the exercise of its legislative powers.

In our national Constitution we find provisions even more pointedly clashing with such a maxim. The power of taxation is granted to Congress in the broadest terms. There are two express limitations as to the manner of exercising that power and these limitations without referring to others necessarily exclude the application to all taxes of any rule of "uniformity and equality." One applies to "direct taxes" and the other to "duties, imports, excises." If any mode of taxation can be conceived which does not come within the meaning of this designation of two kinds of taxation, the exercise of that mode is unlimited.

43 "Direct taxes shall be apportioned among the several States which may be included within this Union" in proportion to the census directed to be taken. By this positive mandate any rule of equality in laying direct taxes is rendered impossible. The citizens of different States, if thus taxed at all, must be taxed unequally. "All duties, imports and excises, shall be uniform throughout the United States." This mandate is plainly geographical, demanding uniformity of rate in all places, but not uniformity of operation, and practically forbids the effort to secure uniformity of operation in laying indirect taxes. And so by force of specific commands the theory that equality and uniformity are essential to taxation is ignored. It is unnecessary to dwell upon the reasons for these provisions; they are familiar to all. But the significant fact is the clear declaration of the sovereign will that in exercising the power of taxation, considerations of public policy must dominate. In certain vital matters affecting the relations of different States to each other and to the General Government, these considerations of policy are fixed by the sovereign will, but in all other respects they are committed with the power of taxation to the Congress; and whether fixed by the Constitution or left to Congress these considerations are the masters not the servants of theories of uniformity and equality.

The Federal courts have had occasion to discuss this matter of "equality in taxation" in two classes of cases. One arising in States whose local constitutions contain some express phrase of that kind, and one arising from the construction of the national banking law. In both classes the court is called upon to deal with the purely judicial question of the interpretation of language

44 used, and in the former has been obliged to struggle with the problem of discovering distinctions that may save the taxing power from serious paralysis. In some instances these discussions have taken a wide range; but in all the considerations entertained

are firmly tied to the question before the court, that is, the meaning of language used, in one case in a State constitution and in the other in an act of Congress. But quite recently the specific claim that the U. S. Constitution contains some rule or principle of equality and uniformity of operation in taxation has been brought before the U. S. Supreme Court and decided. Knowlton *v.* Moore decided May 14th, 1900. In the careful-considered opinion in this case delivered by Mr. Justice White, the court, after long deliberation and with a single dissenting vote, holds that the provisions of the Constitution are inconsistent with the existence of a theory of equality in taxation, which the judicial department is empowered to define and impose upon the legislative. The case arose under the war-revenue act of June 1898 imposing tax on legacies. The act provided that when by the same will legacies of different values were bequeathed to different persons strangers in blood to the testator, the tax on one legacy might be 5 % of its value, on another 7½ per cent., on another 10 per cent., on another 12½ per cent., and on another 15 per cent. This tax was uniform only in a geographical sense, and its patent and "profound inequality" can be defended as just only on considerations of public policy. The precise claim was, that this whole scheme of taxation was grossly unequal, and therefore was not within the taxing power of Congress as granted and limited by the Constitution. The power of State legislatures whose State constitutions contain some express provisions requiring uniformity and equality in taxation to impose such unequal taxation had previously been sustained on the theory of a distinction in the right of property as recognized and protected by the State, between the right to make a transfer of property to take effect before death and one to take effect after death. It is thus stated in Magoun *v.* Ill. Trust and Savings Bank 170 U. S. 283, 288. "The right to take property by devise or descent is the creature of the law, and not a natural right—a privilege; and therefore the authority which confers it may impose conditions upon it. From these principles it is deduced that the State may tax the privilege, discriminate between relatives, and between these and strangers and grant exemption and are not precluded from this power by the provisions of the respective States' constitutions requiring uniformity and equality of taxation." Therefore the power of legislatures to tax legacies is less trammeled and "disenthralled from limitations which would otherwise apply, if the privilege of regulation did not exist." How far such a distinction as applicable to the power of taxing may result from the impracticable nature of such requirements in the State constitutions is not material; the distinction has no application to the power of Congress. In Knowlton *v.* Moore the court holds that the tax in question is one on the transmission and receipt of property by death which is as common and legitimate a subject of taxation, as any other transmission of property, or as property itself, and says—"Of course, in considering the power of Congress to impose death duties, we eliminate all thought of a greater privilege to do so than exists as to any other form of taxa-

tion, as the right to regulate successions is vested in the
46 States and not in Congress." And so the precise question whether the U. S. Constitution forbids inequality in any form of taxation was presented in a mode the most concrete possible, and decided in the negative. Still the question whether any particular form of taxation is more just and equal than some other is a question that must be decided; but not by the judicial department. As to this the court says, "in the absence of constitutional limitation, the question whether it is or is not is legislative and not judicial."

Is it so then that the legislature may make any exaction it pleases under the form of a tax? Clearly not. The legislative power in all its manifestations is limited, including that of taxing, which however from its inherent nature approaches more nearly to arbitrary power. If a tax is laid on the exercise of the duty of voting, or if any exaction is put in the form of taxation as a mere sham and is in effect and purpose a denial to one of the enjoyment of rights indicated in the Constitution, and the enjoyment of which it secures equally to all, or is a seizure of the property of one for the benefit of another, or is an uncompensated confiscation of property, the law authorizing such exaction is in violation of mandates contained in our constitution, and probably in all American constitutions, and is therefore void. It is neither taxation nor legislation. Such guarantees are not limitations on the power of taxation, but on all power. It is immaterial in these cases whether the exaction, if it could be considered merely as a tax, is wise or foolish, oppressive or just, equal or unequal; the law is not a law solely because it is forbidden by some command of the supreme law. The meaning and scope of these commands present questions on which
47 the judgments of the judicial department are final; the wisdom or necessity of distributing the burdens of taxation according to rules of equality present questions on which the acts of the legislative department are conclusive.

We see no escape from the conclusion that our fundamental law, either State or national, contains no provisions either expressed or implied that "taxation must be equal and uniform," and the question seems to be set at rest by the decision in Knowlton *v.* Moore.

The claim, however, is urged that the 14th amendment and sec. 2 of art. IV of the U. S. Constitution contain certain provisions inferentially inconsistent with the particular taxation now under discussion. In order to deal with that claim it is necessary to keep in mind the precise nature of this taxation.

The main burden of taxation for municipal purposes falls upon inhabitants of towns proportionally to their ability to contribute to public burdens. Their ability to contribute is determined by lists, prepared under authority of each town, setting to each inhabitant certain sums, according to rules more or less arbitrary, fixed by the legislature. The gross amount of these sums measures the ability of each inhabitant to pay, and taxes are imposed by all municipal corporations authorized to lay taxes, upon the individuals according to their ability to pay thus measured. The rule of measurement was formerly largely arbitrary but as now fixed by the legisla-

ture is substantially the present fair market value of property owned both real and personal. This rule of taxing inhabitants of towns as individuals according to their ability to contribute, measured by legislative rules, was adopted in 1650 and still prevails as to municipal taxation and to a limited extent as to State taxation. Yale University *v.* New Haven, 71 Conn., 316,
48 330. When in later years local business came to be carried on by corporations rather than individuals or partnerships, a similar rule was applied in taxing such corporations. When banks were first chartered in 1792, a different rule became necessary as to them, which has since been applied to other corporations of similar character whenever chartered. As the burden of municipal taxation fell on towns, and as the inhabitants of a large number of smaller towns were proportionally less able to bear their burden than those of larger towns. The legislature sought to give to these smaller towns in the preparation of their tax-list, the benefit of all property that could be considered as increasing the ability of their inhabitants to pay; and this desire to relieve small towns from a practically unfair share of burden has influenced our whole system of taxing corporations. While banks were located generally in the larger towns their property was equitably owned by individuals residents in many other towns, and so instead of taxing the banks directly, the shares of their stock were treated as distinct personal property and were listed to the individual owners in the towns of their residence. Still later when corporations such as railroads, savings banks and mutual insurance companies came into existence, it was found impracticable to accomplish fair results, by taxing them under existing rules, and as to them still another rule was adopted *i. e.* that of special taxes by which the legislature taxed the corporation directly for the support of the State government, fixing the sum to be paid first by an arbitrary rate fixed by the legislature, and second by an arbitrary ascertainment of a sum which might be considered as approximating the value of the property owned. And these two factors *i. e.* the rate and the
49 sum to which the rate applies, are arbitrarily determined by the legislature, having regard in fixing each to the other, with the intent that the result shall be a fair and just tax. It was early found that these two modes *i. e.* that of taxing share as the distinct property of the individual owner, and that of special taxes must be combined in the taxation of banks and similar corporations. Shares of stock owned by non-residents of any town could not be listed as the personal property of an inhabitant of any town; and for a time the corporations in respect to shares so owned escaped all taxation. Eventually a special tax was laid upon the corporation in respect to these non-resident shares. Like other special taxes, the amount of the tax depends on two factors *i. e.* the rate and the sum on which the rate is laid, arbitrarily fixed by the legislature having regard to the other in fixing each. As such non-resident shareholders would otherwise substantially escape that contribution to the taxation of the corporation which is forced from the resident shareholder the law also compels them proportionally to the num-

ber of their shares to reimburse the corporation for the special tax so paid in respect to their shares.

It follows that in taxing one class of corporations, the law divides the members of the corporation into two classes, one consisting of shareholders whose property rights can be listed for municipal taxation in the towns of their residence, and the other of those whose property rights cannot be so listed; that it recognizes a similar distinction in the corporate property and interests which belong to the members who constitute the corporation; that the corporate property and interest represented by the former class of members
50 is subjected to municipal taxation and exempted from special taxes, and that represented by the latter class is exempted from municipal taxes and subjected to special taxation; that the portion represented by municipal shareholders is taxed under rules governing rate and sums to which the rate applies, including valuations, determined by the necessities of municipal taxation, and that the portion represented by the State shareholders, is taxed under different rules determined by the necessities of special taxation; that all taxes thus laid are to be paid by the shareholders proportionally to the number of shares respectively owned by the members of each class, in one case through the form of a tax as on distinct personal property, and in the other through the form of reimbursing the corporation for an expense which properly belongs to the shareholders on account of whom it was incurred.

The precise thing therefore claimed as void is,—treating the members of one corporation together with the proportional part of the corporate property pertaining to them as members, as forming two classes, and subjecting one class to municipal taxes only, and the other class to State or special taxes only and fixing the amount to be contributed to these diverse objects by members of one class under rules which necessarily differ in form from those applicable to the other. We have seen that such taxation is not void, because it may be regarded as neither uniform nor equal, nor because it may seem to the judges of this court to be unfair and unjust? Veazie Bank *v.* Fenno, 8 Wall. 533, 548. The only remaining claim is that for some other reason it is in violation of the constitutional provisions mentioned.

The 14th amendment seeks to add the security of national protection to the two guarantees common to the State constitu-
51 tions by which life, liberty and property are free from invasion, except under authority of law consistent with the Constitution, and by which any person or class of persons within State jurisdiction is secured against hostile discrimination in providing equal protecton under the law in the enjoyment of rights belonging to all. It was not intended to otherwise affect the existing control of States over the civil rights of its citizens. U. S. *v.* Crinkshank 92 U. S. 542, 554; Mo. *v.* Lewis 101 U. S. 22, 31; Bill's Gap R. R. Co. *v.* Penn 137 U. S. 232, 237.

The occasion, purpose, scope, and effect of the 14th amendment were authoritatively stated by the U. S. Supreme Court speaking through Justice Miller, shortly after the adoption of the last three

amendments, Slaughter-house cases, 16 Wall. 36. The underlying thought of the opinion in that case has never been intentionally departed from; and in a very recent case has been deliberately affirmed by the same court in an opinion delivered by Mr. Justice Peckham, reviewing adjudications of the intervening 27 years. Maxwell *v.* Dow, U. S. Supreme Court, Feb. 26th, 1900. The reasoning of these two leading cases excludes the idea of the 14th amendment placing any new limitations on the power of the people of the States to determine their civil rights by their fundamental law, unless in the hardly thinkable case of a rescission of the guarantees relative to the supremacy of the law of the land and equality in the enjoyment of constitutional civil rights. If then, the legislation complained of is invalid as invading any civil rights secured by our Constitution and thus deprives the defendant's shareholders of property contrary to the law of the land or is otherwise obnoxious to these guarantees, it may violate the provisions of the 14th amendment; otherwise it does not.

52 It would seem idle to claim the invasion of any such right, unless the right to "equal and uniform taxation" is one. Our fundamental law establishes no such right. And so the appeal to the 14th amendment fails by reason of the primary error of supposing that our constitution contains such a maxim. The constitutions of other States contain a maxim of that kind, and in these States a legislative act imposing an unequal tax on any one is not law; and therefore the collection of such tax might be the seizure of property without due process, *i. e.* contrary to the "law of the land," or, the imposition of such a tax on one person or a select number of persons might invade the right to equal protection of this unconstitutional exemption from such taxation; and so be a violation of the 14th amendment. That such taxation comes within the purview of this amendment solely by force of an express prohibition of the State fundamental law, (unless indeed the legislative act is not really one of taxation, but in effect and purpose an act of confiscation or in other ways a direct assault upon some limitation of the constitution affecting all legislative power) is illustrated by the cases cited.

Whatever extension may properly be given to the provision which forbids the denial by any State to any person or selected number of persons within its jurisdiction of equal protection in the enjoyment of those civil rights secured by its fundamental law to all citizens, it cannot cover the establishment by this amendment of a constitutional rule of "equality in taxation." The broad dictum of the U. S. Supreme Court speaking by Justice Miller, that while State constitutions may contain provisions against unequal taxation "the Federal Constitution imposes no restraints on the States in
53 that regard" (Davidson *v.* New Orleans 96 U. S. 97, 105) has been fully confirmed by the logic of recent decisions.

Another line of cases culminating in Maxwell *v.* Dow *supra* brings into sharp relief the impossibility of inferring from the provisions of the 14th amendment any maxim of "equality in taxation."

It was claimed that the 14th amendment imposed upon each State

the limitations of power imposed upon the U. S. by the first eight amendments. This claim had been denied in several decisions, and in Maxwell *v.* Dow it was held that the State of Utah through its local constitution could deny to every one within its jurisdiction the common-law right of trial by jury, and such denial was not obnoxious to the 14th amendment, which acted on fundamental rights as they existed ine ach State. The right of trial by jury, until recent years, has been generally regarded as the most essential of those secured by the muniments of English liberty; with other rights protected by the first eight amendments it forms the body of "privileges and immunities," which our American constitutions have in general placed beyond the reach of legislative power. "Equality in taxation" finds its source as a fundamental maxim in the brilliant speculations of the encyclopedists formulated into a declaration of the "rights of man" and adopted by the revolutionary assembly of France in 1789. The proposition that the 14th amendment gives the national protection to the equal enjoyment of civil rights as established in each State, and should not be extended by inference is demonstrably sound; and this being so, through what considerations of public policy or by what process of reasoning can
an inference be drawn which leaves the right of trial by jury
54 subject to the control of the State sovereignty and places the
theory of "equality in taxation" beyond its power; which holds that sovereignty competent to define and alter the hard-won civil rights of freemen as embodied in the petition of rights, the bill of rights, our local and national declaration of rights, but powerless to reject the theories of doctrinaires, embodied in the "rights of man"?

The defendant's claim of a special violation of sec. 2 of art. IV of the U. S. Constitution is greatly narrowed by the elimination of his initial error of treating the maxim "Taxation must be equal and uniform" as a mandate of our fundamental law. If the defendant were right as to the existence of such a mandate, then exemption from unequal taxation might be considered a civil right or "privilege" secured by our constitution to every citizen of this State, and a law which deprived citizens of other States of that privilege might be treated as obnoxious to this particular clause. But the claim being untenable, the clause has no application unless the legislation in question deprives citizens of our sister States of some other privilege and one to which our citizens by virtue of their citizenship are entitled. The mere fact of discrimination is immaterial. The exercise of the legislative function necessarily involves discrimination. While discrimination in itself may be harmless, it does sometimes serve to mark the character of legislation. Thus a law purporting to be a police regulation may by reason of its discriminations, be shown to be a regulation of commerce. So a law purporting to be mere taxation, may by the nature of its discrimination be shown to be in fact a deprivation of citizens of other States of some civil right secured to our own.

"The citizens of each State shall be entitled to all privi-
55 leges and immunities of citizens in the several States." The
meaning and effect of this language in substantial particulars

is settled. It is confined to the single purpose of preventing an exercise of the independent power left to each State in favor of its own citizens in respect to their common personal rights as citizens and against a participation in the same rights by citizens of other States. "Privileges and immunities" are those civil rights belonging to all citizens of the State. Corfield *v.* Coryell 4 Wash. C. C. 371; Slaughter-house cases *supra;* Blake *v.* McClung 172 U. S. 239; Maxwell *v.* Dow *supra;* Lemmon *v.* People 20 N. Y. 562. They are not special privileges such as any State may grant to portions of its citizens, but those "which are common to its citizens under its constitution and laws by virtue of their citizenship." Pembino Mining & Milling Co. *v.* Penn 125 U. S. 181. The discrimination must be personal. Shipper *v.* Penn. R. R. Co., 47 Penn. 338, and against citizens of another State as natural subjects of that State, and so corporations cannot be citizens within the meaning of the clause. Ducat *v.* Chicago 10 Wall. 410. To render a State law obnoxious to this clause, it is essential 1, that the privilege claimed by the citizen of another State should be a civil right common to the citizens of the enacting State. 2. That the privilege claimed should be denied to a natural citizen of another State in his capacity as such citizen. The legislation complained of does not come within either of these requirements. The "privilege" claimed is under our tax legislation, and must be one of the following:—The right of all citizens of this State, being members of a State corporation to be taxed in respect to their interests in the corporation. 1, for the same objects of taxation, or, if taxed for
56 differing objects, 2, by the same modes of taxation, or, if
" taxed for differing objects and by different modes, 3, by the same rules of valuation and 4, to a gross amount of taxation which shall be the same for each member in proportion to his interest. Neither our legislation nor our constitution entitle our citizens to such rights. The distinctions made by our law are within the legislative power of taxation, and their wisdom, or folly cannot present a judicial question. It may be noted in reference to the 4th, privilege claimed that equality in the gross amount of taxation falling upon two classes of shareholders taxed under our law for the differing objects of municipal taxation and State taxation is impossible and the different modes of taxation are adopted with a view of roughly obtaining some equality which cannot be so nearly approximated in any other way; and it may be further noted that the taxation is not claimed to be oppressive, indeed it was urged in argument that the stress of taxation falling on this defendant and its stockholders is far less than that falling on other corporations transacting a similar business. All these claims resolve themselves into the one claim of a fundamental right to the application of a theory of uniformity and equality in taxation.

If the defendant is treated as representing its "non-resident" shareholders, there is no discrimination against them in their capacity as "citizens of other States." The discriminations are between members of our State corporations by reason of their participation in its grant of corporate franchise. In accepting the rights of prop-

erty inherent in that grant, they voluntarily put themselves for purposes of taxation under our jurisdiction. The State discriminates
57 in the manner of compelling members of a corporation to share the gross amount which the corporation should contribute under all forms of taxation by reason of the property created and accumulated and privileges enjoyed through the State's grant of incorporation. The obligation of the members to submit to such discrimination, is an incident to their acceptance and enjoyment of the grant. Shares of stock in the hands of the shareholders may be treated for certain purposes, including some forms of taxation, as a property distinct from that of the corporation, but nevertheless the real interest of the shareholder is a corporate interest and one element of the taxation the State may impose on the corporation. The Delaware railroad tax 18 Wallace. 208. It may assess the shares and compel the corporation to pay the tax. Nat. Bank *v.* Com. 9 Wall. 353, 363; Tappon *v.* Merchants' Bank 19 Wall. 490, 500. Chief Justice Waite speaking for the court, stated the principle thus: "That in corporations four elements of taxable value are sometimes found; First, the franchise; second, the capital stock in the hands of the corporation; third, the corporate property; and fourth, the shares of capital stock in the hands of individuals stockholders" Tenn. *v.* Whitworth 117 U. S. 129, 136; Farrington *v.* Tenn. 95 U. S. 687. The State may tax one or all these elements and discriminate in the taxation, unless restricted by some special constitutional provision. It is held that where the Constitution forbids unequal taxation, the State may nevertheless discriminate in the taxation of those rights of property growing out of an exercise of its power to regulate the law of succession and wills; *a fortiori*, the State may prescribe the terms on which rights of property growing out — its grant of special corporate privileges may be enjoyed. In the law complained of, in so far as it taxes a
58 corporation on account of the interest of its non-resident shareholders, the whole force of "non-resident" as used, is to designate such persons as by reason of their non-residence in some particular town, cannot be listed for municipal taxation. It is the same purpose and effect as if the law had directed the stock of all shareholders resident in towns having a grand list of less than $5,000,000 to be subjected to municipal taxation in the town where the owner resides, and directed the corporation on behalf of all non-residents of such towns to pay a tax to the State of one per cent. on that portion of its franchise and property exempted from municipal taxation and represented by the interests of said non-resident shareholders, the amount of that portion to be ascertained in any manner the legislature might deem just. Such a law would not discriminate against citizens of other States in their capacity as such citizens and just as clearly, under any fair reading of our legislation, the existing statute does not so discriminate.

The distinction between this case and others where this clause of the constitution has been applied to taxation is broadly marked. In all others there was an invasion of that right of every one secured in the State constitution to freedom of harmless action in respect to

person and property, equal before the law, to that enjoyed by all other citizens under the same conditions and in the same circumstances. The discrimination was not a mere incident of legitimate taxation, but one aimed directly at citizens of other States, calculated and intended to deny or limit as to them a clearly defined civil right. We believe the right to equality of privilege in all members of a corporation under the grant of corporate franchise is not secured in any constitution; certainly not
59 in our own. In Ward *v.* Maryland (12 Wall. 418) the right to freedom of occupation was invaded by a discriminating tax against non-resident traders. In Blake *v.* McClung (172 U. S. 239) the same right was invaded by a law preventing creditors, citizens of other States in sharing equally with those of Tennessee in the distribution of an insolvent estate of a Tennessee citizen. "Certain creditors, solely because of their being citizens of Tennessee are accorded advantages in the distribution of the assets in question which are denied to other creditors, solely because of their being citizens of another State than Tennessee." S. C. decided Jan'y 8th, 1900. The same distinction appears in the State cases cited. In Sprague *v.* Fletcher 69 Vt. 69, the equality of right, as above defined, in the enjoyment of tangible property was claimed to be invaded; without stopping to investigate the application, the principle sought to be applied, is similar to that in the Federal cases. In Farmington *v.* Downing 67 N. H. 441, there is the further distinction that the New Hampshire constitution contains a clause forbidding inequality in taxation; and the case involved the interpretation of the enabling act of Congress. The invalidity of the N. H. law in this particular was not fully considered, as the case had to be disposed of on other grounds, Oliver *v.* Washington Mills 11 Allen 268 turns on the fact that the thing taxed was tangible property situate in Massachusetts. The conclusion of the court that a dividend after declaration and before payment is a "commodity" belonging personally to the shareholder the same as his money in the hands of any agent, is the foundation of the opinion. The validity of the State law was claimed whether it were considered as imposing a tax or an excise duty. The court held
60 it void from either point of view. If a tax, it violated the Mass. constitution forbidding unequal taxation; if an excise, it was laid solely on citizens of other States on account of such citizenship and so denied to them a privilege or civil right secured to its own citizens. We have been referred to no case where a State law has been held void as violating the provision that "citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," unless the "privilege" was a civil right belonging to all citizens of the enacting State; and the law discriminated against citizens of other States in their capacity as such citizens.

But it is urged that ownership in a share of stock is practically of the same nature as ownership of bonds or debts or even of tangible property; that our tax law practically affects individuals as directly as a tax on their tangible property; that for all practical

purposes in adopting a different mode of ascertaining the tax to be collected for shares of residents and non-residents, the law imposes a larger tax upon citizens of other States than upon our own citizens; and that under the form of corporate taxation, the law in reality and intent discriminates against citizens of other States in *respect to that individual equality before the law secured to our* own citizens. If in fact our law is a mere sham devised for the sake of screening an actual purpose of excluding citizens of other States from participation in those civil rights secured to our own then we cannot sustain the law. The light of justice can pass unimpeded through all the coverings of form and lay bare any hiding substance of disobedience to paramount law. When occasion
61 demands, the court cannot shrink from its duty in discovering the real purpose of any legislation; on the other hand it is worse than folly to apply the microscope to the tangled web of taxation seeking some broken threads that may suggest a defective origin.

It is not, however, true, in the sense suggested, that ownership of a share of stock is practically of the same nature as ownership of tangible property; the latter rests upon a right universally recognized from earliest time which is common to all, and secured in its enjoyment by constitutional guarantees, while the latter is of comparatively modern origin, dependent for its existence upon a legislative grant of special privileges to a few, subject in this and in most cases to alteration and repeal. It is true of all corporate taxation that it affects individuals directly, whether it is collected from the corporation before the declaration of a dividend or afterwards from its members, and it may be true that under the latter mode individuals are affected more directly, but this does not alter the fact that in prescribing the mode of taxation in question the State is exercising its power of limiting the conditions on which the grant of corporate franchise may be enjoyed. While under this mode of taxation a heavier burden may fall on some who are citizens of other States than upon some who are citizens of this State, as a heavier burden may fall upon some than upon others of our own citizens members of the same corporation, yet it does not appear from the record that the effect of the law as a whole is to impose a larger tax upon citizens of other States than upon our own.

We see nothing in this legislation to furnish any justification for the claim that it is in form only a permissible mode of cor-
62 porate taxation, but in purpose and effect is a hostile discrimination against citizens of other States in the enjoyment of property rights common to all; unless it be in a provision contained in sec. 3836 of Gen. Stat. The provision was first enacted in 1877. For a long period prior to that time, the law taxing banks, insurance Cos. and other corporations treated the shares owned by residents of towns as a property distinct from that of the corporation, and directed the assessors to list such shares at the market value thereof on Oct. 1st, to the owners like all other personal property; and directed the cashier or secretary of every such corporation to make a return to the assessors of each town informing them of the

names of shareholders resident in that town, of the number of shares held by each, and the market value thereof during the preceding month. The law also laid a special tax in respect to shares owned by non-residents of towns whose amount was arbitrarily determined, as before explaind, by a valuation measured by the market value of the stock on October 1st, and a legislative rate of one per cent., now fixed at one and one-half per cent. In 1877, the legislature in re-enacting the law directing assessors to list the shares of resident shareholders at their market value, added the following proviso,— "but so much of the capital of any such company as may be invested in real estate on which it is assessed and pays a tax, shall be deducted from the market value of its stock, in its return to the assessors." This proviso is the provision sec. 3836 in question. The plaintiff claims that the provision applies only to the information to be included in the returns of the corporations to the assessors to aid them in listing the property owned in their town and in fixing
63 the market value thereof on October 1st, and does not otherwise affect the duty of the assessors to list all such stock at its market value. In the preceding case of Chase's appeal, 73 Conn., the provision is construed as controlling the action of the assessors.

The defendant claims that the provision thus construed is equivalent in meaning to an enactment that "owners of shares of stock in corporations paying taxes on land in which their capital is invested shall be entitled to a deduction from the amount of their assessment for taxation of a sum for each share owned equal to the assessed value of the corporation's land divided by the whole number of its shares; but citizens of other States shall not be entitled to such deduction from the assessment for taxation of shares owned by them." It is unnecessary to consider what might be the effect of the provision if it expressed this meaning; for such is not its meaning. We have held that the provision thus construed is not a direction to the assessors to make an arbitrary deduction from the amount of the shareholder's list, but is a direction to make a different valuation so that the statute in respect to corporations owning taxable real estate, no longer treats the shareholder as owner of a piece of property distinct from that of the corporation, but treats him as owning an interest in a proportional part of the capital of the corporation *i. e.* of the assets representing the amount of the original capital and profits in excess of existing debts, and therefore in the valuation of this property for municipal taxation a deduction shall be made of the capital invested in land already taxed in this State and elsewhere, and the sum to be deducted must bear the same relation to the shareholder's interest in the taxable value of the
64 real estate as the market value of his share bears to his interest in the actual value of the assets in excess of existing debts. Batterson *v.* Hartford, 50 Conn. 558, 561; Dennis' appeal and Batterson's appeal, 72 Conn. 359, 375.

This change as to the valuation of the property and franchise of a corporation owning taxable real estate, for the purposes of municipal taxation, may produce in some instances more inequality, may be uncalled for or unwise (upon such considerations the action of

the legislature is conclusive) but it certainly does not transmute the legislation in question from permissible taxation to a denial to citizens of other States of that common right in the use and enjoyment of property secured to our own citizens. The plan of taxation remains the same; after as before the change in valuation, it is simply a mode of securing to towns for purposes of municipal taxation the benefit of that part of the corporate property represented by shares owned by their inhabitants and subjecting to State taxation that part represented by shares owned by non-residents, and which cannot be thus subjected to municipal taxation. Here is no hidden purpose to attack the rights of citizens of other States, no evidence that the underlying intention and real substance of the legislation is to hinder citizens of other States in acquiring and holding property. The alleged hindrance is confined to those who buy stock in corporations paying taxes on real estate. Only a small number of the corporations within the scope of the act own taxable real estate to any appreciable amount; can it be said that the law regulating the taxation of half a dozen different kinds of corporations is really intended to hinder citizens of other States
65 from owning stock in the small number of these corporations that may from time to time invest in taxable real estate, or, that the real substance of the law changes from legitimate taxation to hostile and forbidden discrimination with each change of its investments by a corporation? Clearly the legislature is free from any sinister motive in this legislation. Nor in its practical effect does the law justify the charge. The claim here is that non-resident shareholders pay a larger tax than residents. This in itself means nothing. The plan of taxation includes a tax as to the two classes of corporate property for different purposes, whose amount is to be ascertained in a different manner; it necessarily involves inequality in the contributions of members of the corporation for corporate taxation; inequality in the gross amount falling upon the two classes, and inequality in the several contributions of members of the same class; it necessarily rejects a theory of uniformity. This the legislature may do; the claim now under consideration is that in doing this the legislature has produced such a gross inequality between the two classes as in purpose and effect constitutes a denial or hindrance to citizens of other States in the enjoyment of property rights common to all, and secured to our own citizens. It is unnecessary to consider whether, or under what circumstances, the limitations imposed by a State in respect to the mutual relations of members of its corporations in the matter of taxation may transform legislation for that purpose into a denial of rights secured to citizens of other States; it is enough for present purposes that a mere inequality in the stress of taxation cannot produce that effect. But the claim that in this case the inequality operates against non-residents or citizens of other States as a class is unfounded. While the admissions of the demurrer assumed the tax in respect to the defendant
66 for this year to bear more heavily on non-residents than on residents, the general effect of the law is matter of common knowledge. The average rate of taxation for municipal purposes

for the 168 towns, approximates 15 mills, which is the rate for the special tax imposed in respect to non-resident shares; but the average rate for municipal taxation in the ten larger towns (representing much more than half the grand list of the State) is about 21 mills. The clear purpose of the legislature in fixing the mode of valuation for the property subject to a single rate for special taxation and the valuation for the property subject to wider varying rates for municipal taxation, was to approximate a general equality in the burden that should fall on the two classes of property; and it well may be that the rule objected to in respect to the valuation of the interests of resident shareholders in corporations investing in taxable land. Still leaves as a whole, a lighter burden of contribution resting upon non-resident shareholders.

There is no more in this last than in the other claims of the defendant, unless our Constitution requires uniformity and forbids inequality in taxation. Our fundamental law, State and national, contains no such mandate or maxim. Eliminating from the discussion the notion that some theory of uniformity and equality in taxation constitutes a limitation on legislative power and confers upon the judicial department authority to supervise the legislature in the performance of its legislative duty of fairly and wisely distributing the burden of taxation; it seems to us apparent that our plan of taxing corporate property and franchise, first adopted more than half a century ago, and in force in its present form for some twenty-five years, is constitutional, and is not obnoxious
67 either to sec. 2 of article IV nor to the 14th amendment of the U. S. Constitution.

If a change is desirable it may be feasible to preserve to towns the income now derived from taxes on the stock of their resident shareholders, and to collect all forms of corporate taxation from the corporation, thus distributing the burden proportionably among its members. The wisdom of any change must be determined by the legislature.

We have not considered the question, whether it is competent for the defendant in this action to make the claims presented on behalf of its non-resident shareholders. In assuming, as the parties have, that such claims are properly presented, we wish to exclude from any implication of settlement, some nice questions that may be involved in the assumption.

There is no error in the judgment of the superior court.

In this opinion Andrews, C. J., Torrance and Hall, Js., concurred; Baldwin, J., concurred in the result but not in the opinion.

The foregoing is a true copy of the original opinion as filed with the reporter of the court; but the opinion is subject to alteration and addition by the judges until printed in the official reports.

JAMES P. ANDREWS, *Reporter.*

68 THE STATE
vs.
THE TRAVELERS' INSURANCE COMPANY.

BALDWIN, *J.* (concurring in the judgment, but dissenting from part of the opinion of the court):

The opinion of the court rests upon three propositions to which I fully assent. These are, that there is nothing in the constitution of Connecticut, nor in the 14th amendment to that of the United States, which either expressly or by implication requires that all taxation by this State shall be uniform or equal; that there is no fundamental principle of free government or natural justice that all taxation shall be uniform or equal; and that a citizen of another State who participates as a shareholder in the defendant corporation in the enjoyment of a special franchise, granted by this State, with a reservation of the power of amendment or repeal at pleasure, is not deprived by the tax laws which are in question in this cause of any privilege or immunity, coming within the meaning of art. 4, sec. 2, of the Constitution of the United States.

I dissent from so much of the opinion as asserts that if it were a fundamental principle of free government and natural justice that all taxation shall be uniform and equal, the judicial power would be incompetent to declare a statute which violated that principle to be no law.

The constitution of Connecticut (art. 2) declares that "the powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit, those which are legislative, to one; those which are executive, to another; 69 and those which are judicial, to another." It then proceeds (art. 3) to vest "the legislative power of this State" in the General Assembly, and (art. 5) "the judicial power of the State" in this and other courts. This language assumes that a free State has a power of government known as legislative and another known as judicial.

The leading men among the framers of our Constitution were familiar with certain limitations of legislative power, described in the institutional works upon English law. That "if a statute be against common right or reason * * * the common law shall control it and adjudge it void" had been laid down in Bacon's Abridgement (statute, A, 12, 13, 14), repeating the words of Coke in his report of Bonham's case (8 Rep. 118). So in Wood's Institutes (p. 10) it had been stated that "acts of Parliament that are against common justice and reason * * * shall be judged void." These principles had been acted upon by American courts. In the Symsbury case, in this State, it had been adjudged, in 1784, and again in 1785, that an act of our General Assembly to confirm a patent of lands it had granted, but which trenched upon the limits of a prior grant, was, so far as it did thus trench upon them, void, because it took the property of one man and gave it to another. Kirby, 447, 452. We then had no Constitution, unless it were the colonial

charter, and that contained no particular provision affecting
70 laws of such a character. In 1792, the supreme court of South Carolina had come to a similar determination, under like circumstances. Bowman *v.* Middleton, 1 Bay, 252.

This doctrine had not been universally accepted. Blackstone, so far as the powers of the British Parliament were concerned, had thrown the weight of his authority against it. In a cause taken up from this court to the Supreme Court of the United States, and familiar to every Connecticut lawyer in 1818, it had been, twenty years before, the subject of a difference of opinion between the justices of that tribunal.

Mr. Justice Chase had maintained that "the nature and ends of legislative power will limit the exercise of it," adding the remark that "an act of the legislature (for I cannot call it a law) contrary to the great first principles of the social compact cannot be considered a rightful exercise of legislative authority." Mr. Justice Iredell had taken the opposite view. Calder *v.* Bull, 3 Dall. 388, 398.

The question was debated before this court shortly after the adoption of our State constitution, and thoroughly considered, in an opinion by Chief Justice Hosmer, which received the unanimous assent of the court. His conclusion was that should the General Assembly pass a statute authorizing a direct and palpable infraction of vested rights, too unjust to admit of vindication, it
71 would be a violation of the social compact and within the control of the judiciary. Goshen *v.* Stonington, 4 Conn. 209, 225.

No Connecticut jurist has gone beyond Chief Justice Daggett in upholding the plenary authority of the General Assembly prior to the adoption of our constitution, but he, speaking for this court, defined it as "a legislative power capable of making all laws necessary for the good of the people, not forbidden by the Constitution of the United States, nor opposed to the sound maxims of legislation." Starr *v.* Pease, 8 Conn. 548.

The power of this court to declare a statute void which clearly abrogated vested rights because it would "stand opposed to the true spirit of the Constitution," was affirmed, though with cautious reserve, in 1843, in an opinion by Chief Justice Church. Bridgeport *v.* Housatonic R. Co., 15 Conn. 497. In 1856, it was discussed by Chief Justice Storrs, and the suggestion made that it could not exist when the power exercised was "properly legislative in its character." State *v.* Wheeler, 25 Conn. 297, 298. That by the expression "properly legislative in character was meant within the sphere of proper legislation, as that sphere may be finally determined, in case of controversy, by a consideration of the fundamental principles of civil government and natural justice, seems to be demonstrated by another case reported in the same volume, in which a legis-
72 lative grant of a corporate monopoly was adjudged void, in these words: "And although we have no direct constitutional provision against a monopoly, yet the whole theory of a free government is opposed to such grants, and it does not require even the aid which may be derived from the bill of rights, the first section of

which declares 'that no man or set of men, are entitled to exclusive public emoluments, or privileges from the community,' to render them void." Norwich Gas Light Co. *v.* Norwich City Gas Co., 25 Conn. 19, 38.

In 1861, we again deliberately recognized the general doctrine that a statute directly and unjustly impairing vested rights is void, not because of any constitutional provision, but as in violation of "the fundamental principles of the social compact" which, as we then said, through Chief Justice Butler, "underlie all legislation, irrespective of constitutional restraints." Welch *v.* Wadsworth, 30 Conn. 155. The same great judge soon afterwards stated, with his accumtomed clearness and precision, the foundation of the judicial power thus to declare, in extreme cases, a statute not to be a legitimate act of legislative power. The question then before us was whether the General Assembly could allow towns to vote bounties to men volunteering for military service in the field. "It must be conceded," he said, speaking for a unanimous court, "that the people, if convened and organized as a whole, and acting upon the fundamental principle that
73 what the majority prescribe shall be law, could be under no restraint except that imposed by the principles of natural justice; and the General Assembly in the exercise of that conferred legislative power, and irrespective of the bill of rights, are restrained by the same principles and no other. The first question, therefore, may be further narrowed to the inquiry, whether it is contrary to natural justice that A and B and the rest of the inhabitants of the State, should be taxed for gratitu-ties to C and D, when C and D are called upon to render military service to the General Government." Booth *v.* Woodbury, 32 Conn. 127, 128.

I believe that the doctrine of Goshen *v.* Stonington, since so often reaffirmed, is sound, and that the term "legislative power," as it is used in our American constitutions, refers only to what is "legitimate legislation." Bradley *v.* New York & N. H. R. Co., 21 Conn. 305; Wilkinson *v.* Leland, 2 Pet. 657. This is the view which was finally adopted and acted on by the Supreme Court of the United States in the leading case of Loan Association *v.* Topeka, 20 Wall. 655, 662, 663. If such be not the law, then the inadvertent omission in a bill of rights of any of the guaranties against oppression which are usually enumerated, would leave the citizen in that respect subject to the uncontrolled pleasure of the legislature. Our liberties are not, in my judgment, held on so precarious a tenure.

74 The importance of the point which has been discussed has seemed to me to justify this full statement of the reasons which lead me to dissent from what is said in regard to it in the opinion of the court. So far as I can discern, however, it has no importance in the cause, and has simply become the occasion of an *obiter dictum*. We all agree that the statutes in question are not unfair nor unjust. The counsel for the defendant, in their argument, rested their case on the effect of certain provisions of the Constitution of the United States. In the disposition which has been

made of the objections thus raised I fully concur. It seems to me, therefore, that it was quite unnecessary to consider whether, if the statute under examination had been flagrantly subversive of fundamental principles underlying our Constitution and characterizing all free governments, its operation could not have been controlled by that department of the Government in which the people have reposed all their judicial power.

The foregoing is a true copy of the original opinion as filed with the reporter of the court; but the opinion is subject to alteration and addition by the judges until printed in the official reports.

JAMES P. ANDREWS, *Reporter*,
Per W. E. OSBORN.

75 STATE OF CONNECTICUT, }
First Judicial District, County of Hartford. }

In pursuance of the command of the writ of error within, I, George A. Conant, clerk of the supreme court of errors of the State of Connecticut, within and for the first judicial district, and county of Hartford, in said State, herewith transmit the original writ of error, citation and officer's return thereon and assignment of errors and a true copy of the record of all the proceedings and judgment in said supreme court of errors, and of the opinion thereof, and of the dissenting opinion of Associate Judge Simeon E. Baldwin, and of the supersedeas bond in the case of State of Connecticut *vs.* Travelers' Insurance Company, lately pending in said supreme court of errors, under my hand and the seal of said court.

Witness my official signature, and the seal of said supreme court of errors, at the city of Hartford, in the county of Hartford, and first judicial district of the State of Connecticut, this 28th day of December, in the year of our Lord one thousand nine hundred.

[Seal Supreme Court of Errors, Conn.]

GEORGE A. CONANT,
Clerk of the Supreme Court of Errors of the State of Connecticut in and for the County of Hartford and the First Judicial District.

Endorsed on cover: File No. 18,008. Connecticut supreme court of errors. Term No. 219. The Travelers' Insurance Company, plaintiff in error, *vs.* The State of Connecticut. Filed December 31, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Brf. of Matson for P. E.

No. 219.

Filed Mar. 10, 1902.

THE TRAVELERS INSURANCE COMPANY,

Plaintiff in Error,

vs.

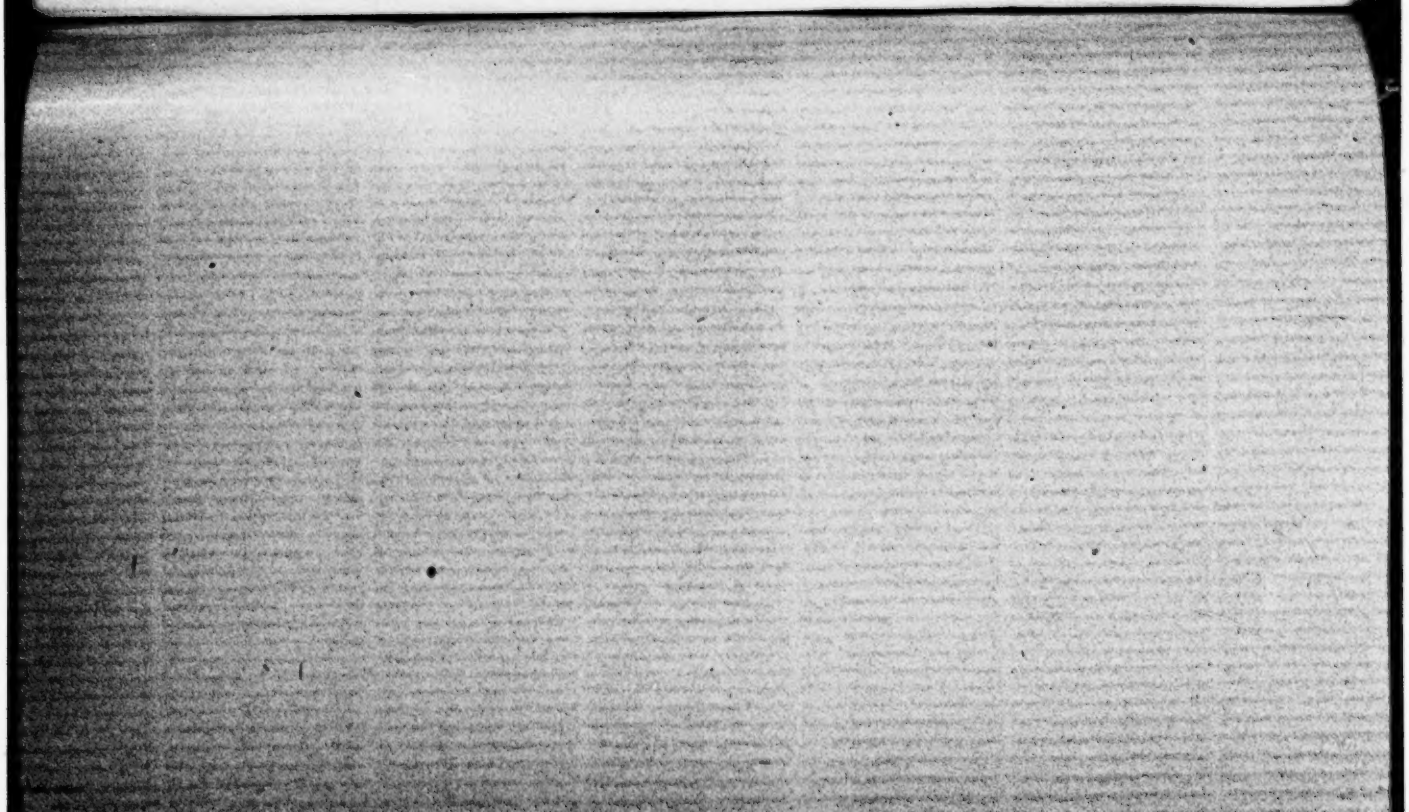
THE STATE OF CONNECTICUT.

In Error to the Supreme Court of Errors of the State of Connecticut.

Brief for Plaintiff in Error.

LUCIUS F. ROBINSON,
WILLIAM R. MATSON,
Counsel for Plaintiff in Error.

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The Case, Lockwood & Brainard Company.
1902.



Supreme Court of the United States.

October Term, 1901.

No. 219.

THE TRAVELERS INSURANCE COMPANY *vs.* THE STATE OF CONNECTICUT.	In Error to the Supreme Court of Errors of the State of Connecticut.

Brief for Plaintiff in Error.

STATEMENT.

This writ of error is brought to review a judgment of the Supreme Court of Errors of the State of Connecticut in an action by the State against The Travelers Insurance Company, a corporation chartered by the State and located in the town of Hartford, to recover taxes upon the shares of the capital stock of the corporation owned by residents of other states than Connecticut.

Under the statutes and law of Connecticut the tax in question is a tax upon the shares of stock as the property of

the stockholders, and is collected through the corporation, which has a lien for the payment upon the shares. The tax is in substance and effect a tax against the stockholders.

The shares of stock owned by residents of Connecticut are listed, assessed, and taxed in the towns where the stockholders respectively reside. The rate of tax is fixed by local authorities, and the assessment is made at the market value of the shares as of October 1st, less a deduction. This deduction is determined by the amount of real estate which the corporation owns and upon which the corporation is subject to taxation in Connecticut and elsewhere. The amount of this corporate real estate owned by The Travelers Insurance Company on October 1, 1898, was very large, and the deduction therefor to the resident stockholders resulted in an assessment of their shares at a figure far below their market value.

The shares of stock owned by residents of other states are assessed and taxed directly by the State. The rate of the tax is fixed by statute at 1½%, and the assessment is at the market value of the shares as of October 1st, without any deduction whatever. The deduction granted to stockholders resident in Connecticut on account of the corporate real estate is withheld from stockholders resident in other states.

By reason of this discrimination, the assessed value of the shares of the stock of The Travelers Insurance Company held by residents of other states on October 1, 1898, was far greater per share than the assessed value of the shares held by stockholders resident in Connecticut on said date, and the tax sought to be collected in the present action from stockholders resident in other states than Connecticut upon the

shares owned by them on October 1, 1898, is far greater per share than the tax levied and collected from stockholders resident in Connecticut upon the shares owned by them on the same date.

The stockholders upon whose shares taxes are sought to be collected in the present action are all citizens of the United States and citizens of other states than Connecticut.

The statute under which this tax is sought to be collected, to wit, Section 2 of Chapter CLIII of the Public Acts of 1897, reads as follows:

> "Sec. 2. Section 3916 of the General Statutes is hereby amended to read as follows: The cashier or secretary of each corporation whose stock is liable to taxation, and not otherwise taxed by the provisions of this title, shall, on the first day of October, annually, or within ten days thereafter, deliver to the comptroller a sworn list of all its stockholders residing without this State on said day, and the number and market value of the shares of stock therein then belonging to each; and shall on or before the twentieth day of October, annually, pay to the State one and one-half per centum of such value; and if any such cashier or secretary shall neglect to comply with the provisions of this section he shall forfeit to the State one hundred dollars, in addition to said one and one-half per centum so required to be paid."

The statute under which The Travelers Insurance Company has a lien for recovery of the tax paid by it upon the shares of nonresident stockholders, to wit, Chapter 50 of the Public Acts of 1899, reads as follows:

> "Section 1. Section 1923 of the General Statutes is hereby amended to read as follows: When not

otherwise provided in its charter, the stock of every corporation shall be personal property, and be transferred only on its books, in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock owned by any person therein, for all debts due to it from him; and any corporation desiring to enforce such lien may give notice to such stockholder, his executor or administrator, and if there be none, his heir-at-law, that unless he shall pay his indebtedness to said corporation within three months it will sell said stock; and such corporation may prescribe by its by-laws the manner of giving notice required by this section, but the notice of sale shall in no case be given until the liability has become fixed."

The statute under which the shares of resident stockholders are assessed and taxed, to wit, Section 3836 of the General Statutes, reads as follows:

"Section 3836. Shares of the capital stock of any bank, national banking association, trust, insurance, investment, turnpike, bridge, or plank road company, owned by any resident in this State, shall be set in his list, at its market value in the town in which he may reside; but so much of the capital of any such company as may be invested in real estate, on which it is assessed and pays a tax, shall be deducted from the market value of its stock, in its return to the assessors."

The plaintiff in error in behalf of the nonresident stockholders defended the present action upon the ground that the statute under which the tax was sought to be collected was repugnant to the Constitution of the United States and in violation of Article IV, Section 2, Paragraph 1 of said Con-

stitution, and of the Fourteenth Amendment thereto. The issues upon the State's demurrer to the answer of the plaintiff in error were taken to the Supreme Court of Errors upon appeal from the judgment of the Superior Court sustaining the demurrer. The Supreme Court of Errors held that the statute in question was not repugnant to the United States Constitution, and was not in violation of Article IV, Section 2, Paragraph 1 of said Constitution or of the Fourteenth Amendment thereto, and by its judgment confirmed the judgment of the Superior Court.

ERRORS.

(1) The Supreme Court of Errors of the State of Connecticut erred in refusing to hold that Chapter CLIII of the Public Acts of 1897 of the State of Connecticut is in violation of Article IV, Section 2, Paragraph 1 of the United States Constitution, in that it requires citizens of other states than Connecticut to pay taxes upon shares of stock of The Travelers Insurance Company owned by them upon an assessed valuation equal to the market value of said shares, and Section 3836 of the General Statutes of Connecticut, under which such stock is assessed and taxed against residents of Connecticut, requires such residents to pay taxes upon an assessed valuation equal only to the market value of said stock, less a large deduction therefrom by reason of the real estate owned by the Company, and upon which it is assessed and pays taxes, and in that Chapter CLIII of the Public Acts of 1897 requires citizens of other states than Connecticut to pay taxes upon shares of the stock of The Travelers Insurance Company owned by them far in excess

of the taxes required to be paid by residents of Connecticut upon shares of the same stock owned by such residents.

(2) The Supreme Court of Errors of the State of Connecticut erred in refusing to hold that Chapter CLIII of the Public Acts of 1897 of said State is in violation of the Fourteenth Amendment to the United States Constitution, and denies to persons within its jurisdiction the equal protection of the laws in that it arbitrarily classifies and taxes the shares of nonresident stockholders of The Travelers Insurance Company and assesses such shares at a valuation far in excess of the valuation of shares of resident stockholders.

BRIEF.

I.

The judgment of the State Court involved the constitutionality, under the United States Constitution, of the statute under which the action was brought.

Section 3836 of the General Statutes of the State provides for listing and assessing, locally, the shares of stock of insurance companies owned by residents of the state. These shares are assessed at their market value less a deduction based on the value of the company's real estate upon which it is assessed and taxed. The deduction from the market value of a share is such proportion thereof as the total assessed value of the corporate real estate, wherever situate, bears to the surplus of the company.

In the case of Batterson *vs.* Hartford, 50 Conn., 558, 561, the court said: —

"The corporation had assets beyond debts to a certain amount. This surplus stands as its capital in the sense in which that word is used in the statute under consideration; presumably the maket value of its shares rests upon it; a portion of it is invested in real estate paying taxes in this state and other states. The legislature intended to relieve the shareholder from the assessment upon the value of his right, so far as any portion of that surplus of corporate property which was the foundation of the market value was invested in real estate and had paid a tax."

In the case of Batterson et al., Appeal from the Board of Relief, 72 Conn., 374, 376, the court said:—

"It is certain that 'capital' used in this connection, *i. e.*, as measuring a figurative ownership of the shareholder in the property of the corporation, must mean that part of the company's assets which would be divided among the shareholders in case of dissolution; that is to say, the assets representing the amount of the original capital and profits in excess of existing debts. This is the view taken in Batterson *vs.* Hartford, supra, p. 561. The amount, then, to be deducted must bear the same relation to the shareholder's assumed interest in the taxable value of the real estate, as the market value of his share bears to his assumed interest in the capital. In other words, as the whole capital of the corporation is to its capital taxed, so is the whole market value of the shareholder's stock to the amount to be deducted. For example: one ten-thousandth of the Travelers' capital is $336; the market value of the stock is $230; one ten-thousandth of the taxable value of the real estate is $90. We have, then, the proportion, 336 : 90 :: 230 : 62. The shareholder, under this theory of the statute, is equitably entitled to a deduction of $62, as made by the assessors."

In Barrett et al., Appeal from the Board of Relief, 73 Conn., 288, 291, the court said : —

> "Under these circumstances, it is too late to inquire whether the original statutes regulating returns to assessors of the market value of the shares in trust or insurance companies were intended to give the exemption of which the appellants now claim the benefit. That such was their intent was assumed in Batterson *vs.* Hartford, and conclusively affirmed by the legislature by incorporating them without substantial change, after they had thus received that construction, in the General Statutes."

See also

Dennis's Appeal from the Board of Relief, 72 Conn., 369.

State *vs.* Travelers Insurance Co., 70 Conn., 590.

The Travelers Insurance Company, on October 1, 1898, held a vast amount of real estate, and under said Section 3836 as construed in the cases above cited, the shareholders resident in Connecticut obtained, on account of such real estate holding, a large deduction from the market value of their shares in the assessment of such shares for taxation.

Chapter CLIII of the Public Acts of 1897 provides for assessment and taxation of shares of stock of insurance companies owned by stockholders not resident within the State of Connecticut. The returns made by officers of the corporations are corrected, and the assessment is made by the State Board of Equalization under the provisions of Section 39 0 of the General Statutes. Such shares are assessed at their market value without deduction, and taxed by a special

state tax at a fixed rate of one and one-half per cent of such value.

In the case of State *vs.* Travelers Insurance Co., 70 Conn., 590, 603, this same defendant urged that the deduction in question should be granted to nonresident shareholders, and the court said: —

> "The pith of the answer to the complaint is that the Board of Equalization ought to have allowed the deduction claimed from the market value of the shares on account of the defendant's holdings of taxable real estate. Such a deduction is provided for by General Statutes, Section 383 i, in favor of every resident shareholder. . . . . There is no statute which in terms required or authorized the Board to allow the deduction claimed."

The present action seeks to collect the tax levied under the last named statute upon shares of the stock of The Travelers Insurance Company owned by nonresidents on October 1, 1898. The assessment of these shares was at their market value, which was far in excess of the assessed value of the shares owned by residents on October 1, 1898, and the amount per share sought to be collected in this action is far in excess of the amount per share paid or required to be paid as a tax by the several resident shareholders upon the same stock owned by them on October 1, 1898.

The tax imposed by this statute is in form a tax against the corporation. The corporation has a lien at all times upon the shares to recover from the stockholder the tax so paid, and the stockholder is deemed to come under a contractual obligation to repay the money so advanced by the com-

pany. The tax is a tax upon the property of the stockholder and not the property of the company, and is in substance and reality a tax against the stockholder and not against the company.

In Batterson *vs.* Hartford, 50 Conn., 558, 560, the court said: —

> "The tax is not upon the property of the corporation; it is explicitly upon the shares."

In the case of State *vs.* Travelers Insurance Co., 70 Conn., 601, the court said:—

> "The tax in question is in form one against the corporation. State *vs.* Royce, 68 Conn., 311. In substance it is one against each of its nonresident stockholders to be paid by it in their behalf. . . . It is measured by the number of shares held by nonresidents and the value of each share. These shares do not belong to the corporation, and a tax on their value is virtually a tax against their owners."

And again: —

> "By becoming members of the defendant company after the passage of the act of 1897, or by remaining members subsequent to that event, every nonresident stockholder may fairly be deemed to have assented to any payment which it might be legally compelled to make in his behalf under the provisions of that law, and so to have come under a contractual obligation for the reimbursement of the moneys so advanced. For the full performance of that obligation, the defendant had a lien under General Statutes, Section 1923."

See also

Bank *vs.* Kentucky, 9 Wall., 353.

Tappan *vs.* Bank, 19 Wall., 490.

The only method of collecting the tax is by an action against the company, and the proper method of resistance is by defense to such action. The proper and possibly the only method by which the validity of the statute can be questioned in behalf of the nonresident stockholders is in defense to an action brought under the statute against the corporation, and the company's right to raise the question of the constitutionality of the statute in behalf of these stockholders has not been challenged.

In State *vs.* N. Y., N. H. & H. R. R. Co., 60 Conn., 326, 334, the court said: —

> "The statutes of this state now in question do not provide any means by which the tax therein imposed can be collected. Any unwilling corporation can contest the whole tax, as to its validity or amount, or any part of it, in a suit just as the defendant is doing in this suit. There is no way other than by a suit like the present one in which the collection of any tax imposed by these statutes can be compelled; and in such a suit any defendant may call into question the amount or the validity of the tax, as a whole or as to any part of it."

And in State *vs.* Royce, 68 Conn., 311, 315, the court said: —

> "An examination of the section named, as well as of the other sections of the chapter in which it is included, indicates that the legislature supposed the corporation itself would be the defendant against which any action for an unpaid tax, authorized by that statute, would be brought. The corporation is the real tax debtor."

See also

Oliver *vs.* Washington Mills, 11 Allen, 268.

The special facts presented to the State Court in this particular action are recited in the complaint (see Record, page 4), and in the substituted answer (see Record, pages 10 and 11). The allegations of the substituted answer are admitted by the State's demurrer to that answer.

The only reasons assigned in the demurrer which did not involve the constitutionality of the statute are the fourth, fifth, and ninth reasons.

The fourth and fifth reasons were as follows (see Record p. 13):

> "Fourth: — It is immaterial at what amount the defendant's investments in real estate were on the 1st day of October, 1898, carried on its books."
>
> "Fifth: — It does not appear but that on the 1st day of October, 1898, the defendant company had assets vastly in excess of its capital and surplus, and it does not appear that any part of its capital was then invested in real estate."

The demurrer admits that the company owned real estate of a value exceeding eighteen hundred thousand dollars upon which it was assessed and taxed, and that all of the resident owners of its stock were assessed at a valuation equal to the market value of the stock less a large deduction therefrom by reason of the company's investments in real estate, and that the amount per share sought to be collected from the defendant in this action as a tax upon the stock owned by non-resident stockholders is far in excess of the amount per share paid and required to be paid as a tax by the several resident stockholders upon the stock owned by them on October 1, 1898. (See Record, page 11.)

The material fact is that the resident stockholders secured a substantial deduction in the assessment of their stock because of the corporate holdings of real estate which bore a direct tax burden. The exact amount of the company's capital, the exact amount of its surplus, the exact amount of the assessed value of its real estate, and the exact amount of the deduction by which the resident stockholders were favored are not significant, and the fourth and fifth reasons of demurrer were properly ignored in the opinion of the state court.

The ninth reason of demurrer was as follows: —

Ninth: — The laws of this State do not provide for any deduction from the market value of the stock of the defendant company owned by resident shareholders, in assessing said stock for taxation, by reason of the investments of said company in real estate.

This ground of demurrer was not sustained. On the contrary, the court affirmed its previous rulings in Batterson *vs.* Hartford, 50 Conn., 558, and Dennis's Appeal, 72 Conn., 369, and Batterson's Appeal, 72 Conn., 374.

Referring to Section 3836, the court says (see Record, p. 35):

> "We have held that the provision thus construed is not a direction to the assessors to make an arbitrary deduction from the amount of the shareholders' lists, but is a direction to make a different valuation so that the statute in respect to corporations owning taxable real estate no longer treats the shareholder as owner of a piece of property distinct from that of the corporation, but treats him as owning an interest in a

proportional part of the capital of the corporation, *i. e.*, of the assets representing the amount of the original capital and profits in excess of existing debts, and therefore in the valuation of this property for municipal taxation a deduction shall be made of the capital invested in land already taxed in this state and elsewhere, and the sum to be deducted must bear the same relation to the shareholder's interest in the taxable value of the real estate as the market value of his share bears to his interest in the actual value of the assets in excess of the existing debts."

With this exception all the issues in the case considered by the state Supreme Court relate to the validity under the United States Constitution of the statute under which the case was brought, and the judgment of the court sustained that statute, and held that it was not in violation of Article IV, Section 2, Paragraph 1, of the United States Constitution or of the Fourteenth Amendment thereto.

II.

The statute law under which the tax is imposed upon the shares of nonresident stockholders is in violation of the 2d Section of Article IV of the United States Constitution, in that it withholds from the valuation of shares belonging to citizens of other states the deduction allowed by the statutes in the valuation of shares of the same stock belonging to citizens of Connecticut, thereby depriving citizens of other states of privileges and immunities enjoyed by citizens of Connecticut.

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

Article IV, Section 2, Par. 1.

(a) The deduction allowed in the assessment of shares of residents is clearly a privilege and immunity within the meaning of this Article.

Such exemption is referred to as an immunity in the early and leading case of Corfield vs. Coryell, 4 Wash., C. C. 371.

In the case of Campbell *vs.* Morris, 3 Har. & M. (Md.), 554, the court said: "Privilege and immunity are synonymous or nearly so. Privilege signifies a peculiar advantage, exemption, immunity; immunity signifies exemption, privilege." After tracing the use of the same words in the Articles of Confederation, the following exposition was given:

> "The court are of opinion it means that the citizens of all the States shall have the peculiar advantage of acquiring and holding real as well as personal property, and that such property shall be protected and secured by the laws of the State in the same manner as the property of the citizens of the State is protected. It means that such property shall not be liable to any taxes or burdens which the property of the citizens is not subject to. It may also mean that as creditors they shall be on the same footing with the State creditor, in the payment of the debts of a deceased debtor. It secures and protects personal rights."

In Paul *vs.* Virginia, 8 Wall, 168, 180, the court said:

> "It was undoubtedly the object of the clause in question to place the citizens of each State 'upon the same footing with citizens of other states so far as the advantages resulting from citizenship in those states are concerned. It relieves

> them from the disabilities of alienage in other states; it inhibits discriminating legislation against them by other states; . . . it insures to them in other states the same freedom possessed by the citizens of those states in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other states the equal protection of their laws. It has justly been said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this."

The clause, as is said in Ward *vs.* Maryland, 12 Wall., 418, 430,

> "protects the rights of a citizen of one state . . . to acquire personal property, . . . and to be exempt from any higher taxes or excises than are imposed by the state upon its own citizens."

And, after showing that the framers of the Constitution intended to remove the inequalities of burden in commercial regulations resulting under the Confederation by forbidding such discriminations, the court adds at page 431:

> "Important as these provisions have been supposed to be, still it is clear that they would become comparatively valueless if it should be held that each state possesses the power in levying taxes for the support of its own government to discriminate against the citizens of every other state of the Union."

In Oliver *vs.* Washington Mills, 11 Allen (Mass.), 268, 281, the Court, after stating that Article IV, Section 2, of the Constitution was doubtless condensed from Article IV, Section 1, of the Articles of Confederation, says:

> "The object of substituting the Constitution for the Articles of Confederation was to make a more

> perfect Union. One of the most efficient methods of effecting this purpose was to vest in the general government the power to regulate not only foreign trade and commerce, but also that between the different states of the Union, and to secure an equality of rights, privileges and immunities in each state for the citizens of all the states. It is obvious that the power of a state to impose different and greater burdens or impositions on the property of citizens of other states than on the same property belonging to its own subjects would directly conflict with this constitutional provision. By exempting its own citizens from a tax or excise to which citizens of other states were subject, the former would enjoy an immunity of which the latter would be deprived."

In Sprague *vs.* Fletcher, 69 Vt., 69, it was held that a statute which allowed a deduction from the appraised value of the personal estate of a resident of an amount equal to the excess of his debts over the aggregate amount of his nontaxable bonds, stocks, and deposits, but which gave a nonresident's property circumstanced the same no deduction, "provides an immunity from taxation to a resident that it denies to a nonresident, discriminates in favor of a resident and against a nonresident, and denies to citizens of other states an immunity given to our own citizens. Such discrimination and denial are clearly forbidden by the Constitution of the United States, which provides that the citizens of each state shall be entitled to all privileges and immunities of citizens of the several states."

The Court goes on to say at page 75:

> "When a nonresident observes laws that are enacted with a view to regulate the conduct and action of our citizens, it is his right and privilege to have his

property, situate in this state, protected under our laws as effectually as the property of a resident; and if his property is subject to taxation, burdens and diminutions that a resident's property, circumstanced the same, is exempt from, his property is not thus protected, and he is denied an immunity under our law that is given to our own citizens, . . . and he is entitled to a mode of classification and of determination as to what sum his property shall be placed in the list at, for the purpose of taxation, that does not subject him to taxation, when he would be exempt therefrom if he were a resident of this state owning like property. . . . A mode of making up the grand list of a nonresident, or a system of classifying, that results in placing his property in the grand list when a resident's property under like circumstances, is not, or is placed at a lower valuation by reason of a deduction from its appraised value that is not allowed to a nonresident, subjects the nonresident to a greater rate of taxation, and to the payment of taxes that are not exacted of a resident. . . . The legislature may have power to provide a method for making up the grand list of a nonresident that differs from the method of making up the list of a resident, and to classify property for the purposes of taxation, if the purpose of the different method and classification is to secure uniformity of taxation and they have a tendency to secure it; but it has not the power to deny to a nonresident a deduction which is allowed a resident, that has the effect to place his property in the list for taxation and exempt like property of a resident, circumstanced the same, except that it is owned by a resident."

In Bliss's Petition, 63 N. H. 135, the court held that a state cannot refuse a peddler's license to a citizen of another

state upon the same terms that it grants licenses to its own citizens, and said: —

> "The state's power of taxation cannot discriminate against the citizens of other states. The equality of privileges and immunities guaranteed by the Federal Constitution, Art. 4, par. 2, to the citizens of each state exempts them from any higher taxes than the state imposes upon her own citizens."

In Wiley *vs.* Parmer, 14 Ala., 627, the statute of a state in taxing the slaves of nonresidents in double the amount at which those of a resident were taxed was held unconstitutional.

In Farmington *vs.* Downing, 67 N. H., 441, 442, in regard to a tax on bank stock owned by a Massachusetts citizen the court said:

> "The taxable value of the shares is not determined by the residence of the owner. If the stock was not taxable to Downing as a citizen of New Hampshire, it was not taxable to him as a citizen of Massachusetts. The imposition of a higher tax upon him as a citizen in Massachusetts than he would be obliged to pay as a citizen of this state would be in conflict with the provision of the Federal Constitution, that the citizens of each state shall be entitled to the privileges and immunities of citizens of the several states."

The constitutions of the New England states, generally, contain no provisions in regard to taxation whatever, except in so far as they enumerate the protection of person and property in their Bills of Right. They contain no specific provisions in regard to taxation as do the constitutions of certain western and southern states.

Judge Cooley in his "Constitutional Limitations," 6th edition, page 489, says: —

> "One very plain and unquestionable immunity is exemption from any tax, burden, or imposition under state laws, as a condition to the enjoyment to any right or privilege under the laws of the United States."

In the case of Blake *vs.* McClung, 172 U. S., 239, a statute of Tennessee, which gave to residents of that state a priority over nonresidents in the distribution of the assets of a foreign corporation, which by filing its charter or articles of association in the state is deemed a corporation of that state, is held so far as it discriminates against citizens of other states to be in violation of the United States Constitution, Article 4, giving equal privileges and immunities to the citizens of the several states. The general view of the court is that, as the statute by its necessary operation excluded citizens of other states from transacting business with such a corporation upon terms of equality with citizens of Tennessee, it was unconstitutional and void, and the state had no right to attempt to give a priority to the claims of its citizens as individual creditors over the claims of individual creditors, citizens of other states, and that no different principle could apply as between individual citizens of the several states when the assets to be distributed were the assets of an insolvent private corporation having the power to contract with citizens residing in states other than the one in which it was located. The opinion contains a learned and exhaustive review of the cases arising under Article 4, Section 2, of the United States Constitution.

The case of Blake *vs.* McClung was substantially followed

.n the Michigan case of Maynard *vs.* Granite State Provident Association, 92 Fed. Rep., 435.

In the case of The State *vs.* Travelers Ins. Co., 70 Conn., 604, the Court in the opinion written by Judge Baldwin described the deduction in question as " this privilege or rebate to our own citizens," and found no offense to Article IV of the United States Constitution because upon the facts in that case it did not affirmatively appear that the non-residents were other than aliens.

(b) The discrimination against residents without the state of Connecticut is a discrimination against citizens of other states. The stockholders in whose behalf The Travelers Insurance Company is defending the present action are all citizens of other states than Connecticut. (See Record, page 10.)

The place of residence within the meaning of the tax statutes of the state is the place of domicile, the place where the tax payer has his permanent home.

Hartford *vs.* Champion, 58 Conn., 268.

The phrase employed in the statute, " stockholders residing without the State," embraces all such stockholders as are citizens of other states.

In Blake *vs.* McClung, cited above, it was urged that, as the statute whose validity was questioned in that action referred only to residents, there was no occasion to consider whether it was repugnant to the provisions of the National Constitution relating to citizens. And the Court said, at page 247 : —

> " The manifest purpose was to give to all Tennessee creditors priority over all creditors residing out of

> that state whether the latter were citizens or residents of such other state or country."

And the Court held that the statute was in violation of Article IV as abridging the privileges and immunities of citizens of other states than Tennessee.

In Maynard *vs.* Granite State Provident Association, cited above, the Court held that a statute giving the shareholders of a corporation resident in Michigan preference over shareholders resident without that state was in violation of the Article as discriminating against citizens of other states who were shareholders. Quoting from the opinion of Judge Taft, at page 440:

> "It appears quite as clearly from the records in this case that the nonresident shareholders of Tennessee are citizens of other states in the Union as it did in the Blake case that the individual plaintiffs in error were citizens of Ohio. The expression 'stockholders and creditors in this state' contained in the Michigan statute must be given the same construction as the words 'creditors resident of the State of Tennessee' in the Tennessee statute were given by the Supreme Court and for the same reasons."

(c) The privilege granted to citizens of Connecticut and withheld from citizens of other states in the valuation of their respective shares bears no relation to the geographical classification of the stockholders.

The argument of the State Court rests upon the contrary assumption.

> "It follows that in taxing one class of corporations, the law divides the members of the corporation into two classes, one consisting of shareholders whose

> property rights can be listed for municipal taxation in the towns of their residence, and the other of those whose property rights cannot be so listed; . . . that the portion represented by municipal shareholders is taxed under rules governing rate and sums to which the rate applies, including valuations, determined by the necessity of municipal taxation, and that the portion represented by the state shareholders is taxed under different rules determined by the necessities of special taxation. (See Record, page 28.)

The State for purposes of taxation treats the situs of the corporation as the situs of the shares belonging to residents of other states, to wit, the town of Hartford; but instead of assessing and taxing these shares as it assesses and taxes the shares owned by residents of the town of Hartford it assesses them at a different and much higher valuation, and taxes them at an arbitrary rate. The rate is not now the object of the complaint. As urged in the court's opinion at page 37 of the record, the average rate of the 168 towns of the state may be about one and one-half per centum, the rate of the non-resident tax. In claiming a violation of Article IV of the Constitution the plaintiff in error questions neither the method of taxing the shares by a direct state tax, although this method is arbitrary and not necessitated by the character or the situs of the property: nor the rate of the tax, although the rate is arbitrary and differs from the rate of the tax upon precisely the same property owned by citizens of Connecticut, and, in the view of the State, situated in the same town; but does complain of the discrimination by the State in withholding from citizens of other states a substantial exemption granted to citizens of Connecticut. The withholding of this exemption is not a natural incident to the

mode of taxation. The State says that the taxing of shares at their full value and the concurrent taxing of the property of the corporation is in substance a double tax. The State thereupon relieves a citizen of Connecticut of this double burden, and places it upon a citizen of Massachusetts, and the state court justifies the act as an incident to a classification. The Court's argument we submit is completely answered by the fact that the proviso granting the deduction could as readily have been written into Chapter CLIII of the Act of 1897 as it was written into Section 3836 of the General Statutes. The state court has we think lost sight of the discrimination which offends Article IV of the Constitution in analyzing the peculiarities of the tax system and tax history of the State. There is no ambiguity in the issue intended to be raised by the plaintiff in error. The officials of the State on the one hand and the officials of the towns and municipalities on the other have in pursuance of law placed different values upon shares of stock of the same company, because certain of those shares are owned by residents and certain of them by nonresidents. Here are two specific things more nearly alike than any two articles of corporeal property, and yet the law attempts to say that one of these things shall be listed for taxation at a higher value than the other, because one is owned by a nonresident and one by a resident. It is the principle of determining values that is objected to, the giving of different values for the single purpose of taxation to property of the same class and kind solely because of the different ownership of that property.

In the case of People *vs.* Weaver, 100 U. S., 539, the court analyzes the process of tax assessment and discusses a discrimination closely analogous to the discrimination here com-

plained of. The case considers the provision of the federal statute permitting the taxation of the shares of national banks at a rate not greater than that assessed upon other money capital, and the offense arose not because of a different rate but because of a difference in valuation resulting from a deduction withheld in the assessment of national bank shares and allowed in the assessment of other property.

(d) Property rights in shares of a state corporation are not excepted from the constitutional protection to citizens of other states.

The argument of the state court would require submission by citizens of other states to whatever unequal burdens the State may hereafter prescribe upon their enjoyment of property in the shares of Connecticut corporations. We quote from the opinion at page 31:

> "The discriminations are between members of our state corporations by reason of their participation in its grant of corporate franchise. In accepting the rights of property inherent in that grant they voluntarily put themselves for purposes of taxation under our jurisdiction. The State discriminates in the manner of compelling members of a corporation to share the gross amount which the corporation should contribute under all forms of taxation by reason of the property created and accumulated and privileges enjoyed through the State's grant of incorporation. The obligation of the members to submit to such discrimination is an incident to their acceptance and enjoyment of the grant."

Even if the State may restrict the membership of its chartered corporations as urged in the court's opinion in

State *vs.* Travelers Insurance Co., 70 Conn., 590, it has never undertaken so to do. A citizen of New York may hold as valid a title to stock in the Travelers Insurance Company as to a lot of land in the town of Hartford, and, as the owner of either, he is entitled to the same privileges and immunities as is a citizen of Connecticut.

The power of a state to tax the corporate franchise of the corporation or its corporate privilege of doing business may be exercised arbitrarily and even capriciously. But the individual's right of ownership in a share of stock of a corporation is not a corporate privilege or a corporate franchise. It is incident to the personal right of property, and the state's power cannot be exerted to defeat or impair such right in violation of constitutional limitation.

In the case of Maynard *vs.* Granite State Provident Association, *supra*, the enforcement of a statutory restriction upon the rights of nonresident stockholders to share in the assets of the corporation was attempted, and the court said, at page 440:

> "Any one in any state had the right to become a stockholder or shareholder in the defendant corporation. There was no restriction attempted by the law of Michigan or the law of any other state upon the residence of stockholders. The equity of stockholders to share in the assets of the corporation when it is being wound up is junior to that of creditors, but it is none the less to be protected as a privilege and immunity under the Constitution of the United States."

And the court held that the priority given by the statute to resident shareholders was invalid as in violation of Article IV, in denying to citizens of other states the privileges of citizens in the state of Michigan.

In the case of *Blake vs. McClung, supra*, the court said, at page 254:

> "We hold such discrimination against citizens of other states to be repugnant to the second section of the Fourth Article of the Constitution of the United States, although generally speaking the state has the power to prescribe the conditions upon which foreign corporations may enter its territory for purposes of business. Such a power cannot be exerted with the effect of defeating or impairing rights secured to citizens of the several states by the supreme law of the land. Indeed, all the powers possessed by a state must be exercised consistently with the privileges and immunities granted or protected by the Constitution of the United States."

III

Chapter CLIII of the Public Acts of 1897 of the State of Connecticut is in violation of the Fourteenth Amendment to the Constitution of the United States, and denies to persons within its jurisdiction the equal protection of the laws, in that it arbitrarily classifies and taxes the shares of nonresident stockholders and assesses such shares at a valuation far in excess of the valuation of shares of resident stockholders.

(a) The stockholders whose shares are taxed under the statute are within the jurisdiction of the State. The tax is upon their property, which the State for its own purposes sees fit to treat as situated within its borders. The rights of the stockholders in that property are subjected to the control and entitled to the protection of its laws.

(b) It is unnecessary to argue that the provision of the Fourteenth Amendment forbidding any state to deny to any

person within its jurisdiction the equal protection of the laws is applicable to arbitrary and unequal tax exactions. The limitations of the Amendment upon the taxing power of the state sovereignties has been the subject of repeated consideration by this court.

See Slaughter House Cases, 16 Wall., 36.

In Philadelphia Fire Association of Philadelphia *vs.* New York, 119 U. S., 110, 120, Mr. Justice Harlan said: —

> "The denial of the equal protection of the law may occur in various ways. It will most often occur in the enforcement of laws imposing taxes. An individual is denied the equal protection of the laws if his property is subjected by the State to higher taxation than is imposed upon like property of other individuals in the same community."

In Neal *vs.* Delaware, 103 U. S., 370, 408, Mr. Justice Field said: —

> "Equal protection of the laws of a State is extended to persons within its jurisdiction, within the meaning of the amendment, . . . when they are subjected to no restrictions in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness, which do not equally affect others; when they are liable to no other nor greater burdens or charges than such as are laid upon others, and when no different nor greater punishment is enforced against them for a violation of the laws. When this condition of things exists in a State, there is that equality before the law which is guaranteed to all persons within its jurisdiction."

In Hagar *vs.* Reclamation Dist., 111 U. S., 701, the Court said in regard to the Fourteenth Amendment:—

> "(It) is intended as additional security against the arbitrary deprivation of life and liberty, and the arbitrary spoliation of property."

In County of San Mateo *vs.* Southern Pacific R. Co. (The Railroad tax cases), 13 Fed. Rep., 722, 733, the Court said: —

> "The Fourteenth Amendment to the Constitution, in declaring that no state shall deny to any person within its jurisdiction the equal protection of the laws, imposes a limitation upon the exercise of all the powers of the State which can touch the individual or his property, including among them that of taxation . . . Unequal exactions in every form, or under any pretense, are absolutely forbidden; and of course unequal taxation, for it is that form that oppressive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws where arbitrary and unequal taxation is permissible; where different persons may be taxed on their property of the same kind, similarly situated, at different rates; where for instance one may be taxed at one per cent. on the value of his property, another at two or five per cent., or where one may be thus taxed according to his color, because he is white, or black, or brown, or yellow, or according to any other rule than that of a fixed rate proportionate to the value of his property."

The affirmation of this case is found in Santa Clara County *vs.* Southern Pacific R. Co., 118 U. S., 394.

(c) The Supreme Court of the State has undertaken to justify the inequalities of the special tax in question by urging the protections of classification.

Quoting from the court's opinion at page 28 of the Record:

> "It follows that in taxing one class of corporations, the law divides the members of the corporation into two classes, one consisting of shareholders whose property rights can be listed for municipal taxation in the towns of their residence, and the other of those whose property rights cannot be so listed."

We submit that this classification is arbitrary, and the special state tax is unwarranted.

The rule within which tax differences through classification may exist without offense to the Fourteenth Amendment has been defined by this court in a series of cases, prominent among which is the case of Magoun *vs.* Illinois Trust & Savings Bank *et al.*, 170 U. S., 283. The thorough analysis contained in the court's opinion in this case of the previous decisions renders their citation superfluous.

The rule requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and the liabilities imposed.

> Hayes *vs.* Missouri, 120 U. S., 68.
> Magoun *vs.* Illinois Trust & Savings Bank *et al.*, *supra.*

It requires the same means and methods to be applied impartially so that the law shall operate equally and uniformly upon all persons in similar circumstances.

> Kentucky Railroad Tax Cases, 115 U. S., 321.

The right of a state to distinguish, select and classify objects of legislation is not without limitations.

> Magoun *vs.* Illinois Trust & Savings Bank, *supra.*
> Bell's Gap R. Co. *vs.* Pennsylvania, 134 U. S., 232.

In Gulf, Colorado & Santa Fé Railway *vs.* Ellis, 165 U. S., 150, 165, Mr. Justice Brewer said: —

> "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground — some difference which bears a just and proper relation to the attempted classification — and is not a mere arbitrary selection."

If this test, which is endorsed in the court's opinion in Magoun *vs.* Illinois Trust & Savings Bank, is applied to the case under consideration, the arbitrary character of the legislation in question is exposed.

The State's power to fix the situs of the shares of nonresident stockholders at the home of the corporation is not here challenged. That situs which the State claims for the purpose of subjecting these shares to a tax is the town of Hartford. The power of the State to impose a tax upon those shares so situated in a mode different from the mode of taxing other shares of the same corporation having the same situs is disputed. To warrant the imposition of the tax the State must necessarily fix the situs of the shares in the town of Hartford. It may then impose upon them the same tax burdens imposed upon similar property similarly located. To select certain of the shares of The Travelers Insurance Company situated in the town of Hartford and subject them to a special tax withholds the equal protection of the laws.

The fact that the shares so selected for special taxation are owned by nonresidents does not change their nature or their situs, and the difference in ownership does not bear any

just or proper relation to the attempted classification. The unreasonableness of the classification is apparent because the residence of the owner in no way governs the situs of the property taxed. The shares of the resident of New York and the shares of the resident of Hartford would with equal propriety be subjected to local taxation at their common situs, viz., the town of Hartford; or if the State saw fit could, together with the shares of all other stockholders of similar companies, be subjected to a special state tax.

(d) It is to be borne in mind that the tax in question is a tax upon property and not a tax upon the right of inheritance or other creation of the taxing power.

The state court seeks a further justification of the special tax in the character of the property taxed. It treats the right of property in a share of stock as a privilege specially granted by the State.

> "It is not, however, true, in the sense suggested, that ownership of a share of stock is practically of the same nature as ownership of tangible property; the latter rests upon a right universally recognized from earliest times which is common to all, and secured in its enjoyment by constitutional guarantees; while the former is of comparatively modern origin, dependent for its existence upon a legislative grant of special privileges to a few, subject in this and in most cases to alteration and repeal. . . . . but this does not alter the fact that in prescribing the mode of taxation in question, the State is exercising its power of limiting the conditions on which the grant of corporate franchise may be enjoyed." (See Record, page 34.)

And again: —

> "It is held that where the constitution forbids unequal taxation the State may nevertheless discrim-

> inate in the taxation of those rights of property growing out of an exercise of its power to regulate the law of succession and wills; *a fortiori*, the State may prescribe the terms on which rights of property growing out of its grant of special corporate privileges may be enjoyed." (See Record, p. 32.)

In supporting the inequalities of the tax in question, the state court relies upon an analogy between a tax upon the property rights in a share of stock and a tax upon the rights of succession and inheritance which called for this court's consideration of the scope of the Fourteenth Amendment in the case of Magoun *vs.* Illinois Trust & Savings Bank, *supra*. We submit that the analogy is forced. The shareholder has no title, legal or equitable, in the corporate franchise. His property in the law's eye is distinct from the corporate property. His rights in a share of stock are as much the object of constitutional protection as his rights in his homestead. The logic of the state court clothes the State with a power to destroy the specific shares of any stockholder, not merely by indirection through a repeal of the corporate franchises, but directly by confiscation.

In defining the privileges guarded by the constitution this court in the early and leading case of Corfield *vs.* Coryell, 4 Wash. C. C., 371, makes such privileges include "the right to take, hold, and possess property of every kind." Are shares of corporate stock to be excluded from this classification? Such exclusion would withdraw the fundamental protections from a class of property whose importance in amount and in diversity of ownership is perhaps exceeded by no other, and would expose its owners to arbitrary legislative reprisal.

Blake *vs.* McClung, *supra.*
Maynard *vs.* Granite State Provident Association, *supra.*

(e) Even if the classification, unnecessarily created by the State for the purpose of subjecting nonresident shareholders to a special state tax in lieu of the local tax imposed upon similar property, is not repugnant to the Fourteenth Amendment, the clear discrimination in the assessment of these shares bears no just or proper relation to such classification, and denies to the persons subjected to its burden the equal protection of the laws.

The discrimination resulting from the assessment of shares of certain stockholders at their market value and the assessment of shares of other stockholders at a valuation calculated by a large subtraction from such market value is conceded in the present case. This difference in the mode of valuation bears no just or proper relation to the classification. In fact it bears to such classification no relation whatever. The granting and withholding of the deduction is essentially arbitrary. The residence of its beneficiaries presents no excuse for its bestowal, and the residence of those from whom it is withheld suggests no warrant for its denial. The only excuse for its existence suggested by the court (See Record, page 37), is in the possible accident that between the arbitrary rate of the state tax and the exemption allowed to resident stockholders an equality of burden might sometimes happen. The lameness of this excuse and the absence of any such legislative intent are made apparent by the court's opinion at page 36 of the record, where it says: "Only a small number of corporations within the scope of the act own taxable real estate to any appreciable amount."

In the present case the difference in the modes of valuation has resulted in gross inequality in the tax burden, and the violation of the protections of the Fourteenth Amendment is clearly demonstrated.

(f) The amount of discrimination is not however to be confounded with the important principal involved.

As said in Gulf, Colorado & Santa Fé Railway *vs.* Ellis, *supra*, at page 153:

> "The matter of amount does not determine the question of right, and the party who has a legal right may insist upon it, if only a shilling be involved."

And, quoting Mr. Justice Bradley, in Boyd *vs.* United Staes, 116 U. S., 616, 635:—

> "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. . . . It is the duty of courts to be watchful for the constitutional rights of the citizens and against any stealthy encroachments thereon. Their motto should be *obsta principiis*."

If the state may discriminate by withholding from one class a tax exemption granted to another class, both composed of the owners of similar property, it may with no greater offense in principle require for one class an assessment of its property at values double or tenfold the values required for another class. The principle involved is the right of the state by tax discrimination to destroy the property of a class whose distinction, to wit, residence without the state, is the sole ground of such discrimination.

Mr. Justice Brewer, in the case of Magoun *vs.* Illinois Trust & Savings Bank, *supra*, said:

> "Equality in right, in protection and in burden is the thought which has run through the life of this Nation and its constitutional enactments from the Declaration of Independence to the present hour. . . . But when a tax law directly, necessarily and intentionally creates an inequality of burden, it then becomes imperative to inquire whether this inequality thus intentionally created can find any constitutional justification."

The statute in question is arbitrary in principle, selecting for a special state tax property precisely similar in character and situs to other property not so taxed, and is discriminating and unequal in providing a measure of valuation differing from the measure for other property of the same character and location and resulting in a far greater tax burden upon persons subjected to its stress than the tax borne by other owners of property of precisely the same character.

In sustaining the constitutionality of the act the Supreme Court of the state is driven by the logic of its own reasoning to sustain the following propositions, which we submit are untenable:

That a classification based upon residence justifies the imposition upon property of a special tax different from the tax imposed upon similar property similarly situated.

That a discrimination made within such classification but without relation thereto and in itself offensive to constitutional limitations escapes those limitations under cover of the classification.

That when nonresidents buy or inherit stock of a Connecticut corporation they voluntarily submit their property rights therein to such burdens as the State may see fit to arbitrarily and capriciously impose.

That because citizens of other states fall within the classification of nonresidents they involuntarily surrender the privileges and immunities granted to citizens of Connecticut.

We submit that the state court erred, and that the statute in question is in violation both of Article IV of the United States Constitution and of the Fourteenth Amendment thereto.

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No. 219.

MAR 6 1902

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 219.

Filed Mar. 3, 1902.

THE TRAVELERS INSURANCE COMPANY,

Plaintiff in Error,

vs.

STATE OF CONNECTICUT,

Defendant in Error.

Brief of Defendant in Error.

CHARLES PHELPS,

Attorney-General for State of Connecticut.

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October Term, 1901.

No. 219.

THE TRAVELERS INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

STATE OF CONNECTICUT.

Brief of Defendant in Error.

STATEMENT OF CASE.

This is an action brought in the Superior Court of Connecticut against The Travelers Insurance Company to recover a tax laid under the provision of Section 2 of Chapter 153 of the Public Acts of that State, passed in 1897, which section is as follows:

"The cashier or secretary of each corporation whose stock is liable to taxation, and not otherwise taxed by the provisions of this title, shall, on the first day of October, annually, or within ten days thereafter, deliver to the Comptroller a sworn list of all its stockholders residing without this State on said day, and the number and market value of the shares of stock therein then belonging to each; and shall on or before the twentieth day of October, annually, pay to the State one and one-half per centum of such value; and if any such cashier or secretary shall neglect to comply with the provisions of this section he shall forfeit to the State one hundred

dollars, in addition to said one and one-half per centum so required to be paid."

The defendant filed an answer (p. 5 of the record) which was objected to, and the defendant then filed a substituted answer, found on page ten of the record, which sets up as a defense in substance, that this tax was laid upon the shares of stockholders of said corporation who were citizens of other states, and that the tax so laid on the stock of such nonresidents was larger than the tax laid upon the stock of residents in Connecticut. It is further alleged that the corporation had large investments in real estate, and by another statute passed in 1889 the value of such real estate was to be deducted from the market value of the stock in levying the tax on stock of residents, but was not so deducted in levying the tax laid on the company which represented a tax on the stock of nonresidents. Said statute is as follows:

"Shares of the capital stock of any bank, national banking association, trust, insurance, investment, turnpike, bridge, or plank road company, owned by any resident in this State, shall be set in his list, at its market value in the town in which he may reside; but so much of the capital of any such company as may be invested in real estate, on which it is assessed and pays a tax, shall be deducted from the market value of its stock, in its return to the assessors."

It is not directly alleged, but it is to be inferred, that this deduction is what is referred to as making the excess complained of, although the language is broad enough to cover any inequality in the taxes laid upon stock of residents and that of nonresidents, arising from any cause whatever.

This substituted answer was demurred to, substantially upon the ground that the stock of residents of this State were by law assessed in and taxed by the cities, towns, and other municipal organizations where they lived, at such rates as were fixed by the various municipalities, and at such values as were fixed by the respective assessors therein, while the stock of nonresidents was assessed at a specific amount and taxed at a definite percentage by the state; and the fact that

such state tax on the stock of nonresidents was not the same as that which was imposed by the various municipalities where residents lived, was immaterial.

This demurrer was sustained in the Superior Court *pro forma*, and the defendant took an appeal to the Supreme Court of Errors of the State, and filed therein as the reason, that the act in question was contrary to the 2d section of Article IV of the Constitution, and of the fourteenth amendment thereto. This claim was overruled in the Supreme Court of Errors, and the defendant brought this writ of error; and by its assignments of error set up the two above named provisions of the Constitution of the United States. In each of these it is substantially provided that citizens of one state shall not be deprived of "the privileges and immunities" of citizens of other states.

The questions in the case are: first, whether it is one of the "privileges and immunities" of every citizen of the United States, having property in a state where he does not reside, to have such property taxed there exactly as similar property belonging to residents is taxed; and, second, if he has such privilege in general, does this act deprive him of it.

POINTS.

1. The law whose constitutionality is now attacked has been on the statute books of the State of Connecticut since 1866 (Chapter XXIX of the Public Acts of 1866). For more than thirty years the Travelers Insurance Company (together with other insurance companies, and all national and state banks), has without question paid taxes to the State on the value of its stock owned by nonresidents. The only substantial change in the law for thirty years has been the raising of the rate in 1897 from one per cent. to one and one-half per cent., and no one of the corporations affected has claimed that this change affects the validity of the statute. The question raised before this court is, therefore, whether the act passed in 1866, and ever since accepted as valid by

all concerned, is to be now found to violate the constitution of the United States.

It may be admitted that the system of taxation adopted by the State of Connecticut is not absolutely equal and uniform. But no system of taxation ever adopted anywhere has attained ideal equality and uniformity. There are all sorts of difficulties encountered by law-makers which render impracticable any near approach to ideal justice. In Connecticut the endeavor is made, in a general way, to require all property to share the burdens of taxation. For practical reasons, however, different kinds of property are got at for the purposes of taxation in different ways. Stock in corporations is generally not taxable, but this is because the corporations themselves pay taxes on all their property in the towns in which they are located, or in which their property is situated. Banks and insurance companies are not thus taxed, but their stock held in Connecticut is made subject to taxation in the towns, etc., in which the holders of the stock reside. If all the stock were held by residents of Connecticut, the whole capital of these corporations would thus be taxed in the hands of the various stockholders in the towns in which they dwell. If, however, Connecticut legislation stopped here, nearly all bank and insurance stock would soon come to stand in the names of residents of other States, and the capital invested in these great financial corporations would escape all substantial contribution to the needs of the State which created and protected them. Accordingly, the legislature has provided that banks and insurance companies shall pay a tax for the use of the State upon that part of their capital stock held by nonresidents and therefore not taxed in the towns, cities, and school districts of Connecticut. The amount of tax payable by residents varies in the different towns, cities, and school districts. In some cases it is less per share than that payable by nonresidents, and in other cases it is more per share. Certainly the amount of tax levied by the State on that part of the capital stock of banks and insurance companies held by nonresidents is not in any way oppressive or

unfair, nor such as to prove an intention of the legislature to throw unduly heavy burdens on nonresidents. In reality the shares of nonresidents now bear a much lighter weight of taxation than they would practically bear if these banks and insurance companies were taxed directly on their assessable property, like other corporations, and like individuals generally.

The policy of taxation as adopted by Connecticut, and enforced by the municipal authorities, is thus expressed by its Supreme Court: —

"The main burden of taxation for municipal purposes falls upon inhabitants of towns proportionally to their ability to contribute to public burdens. Their ability to contribute is determined by lists, prepared under authority of each town, setting to each inhabitant certain sums, according to rules more or less arbitrary, fixed by the legislature. The gross amount of these sums measures the ability of each inhabitant to pay, and taxes are imposed by all municipal corporations authorized to lay taxes, upon the individuals according to their ability to pay thus measured. The rule of measurement was formerly largely arbitrary, but as now fixed by the legislature is substantially the present fair market value of property owned, both real and personal. This rule of taxing inhabitants of towns as individuals according to their ability to contribute, measured by legislative rules, was adopted in 1650, and still prevails as to municipal taxation and to a limited extent as to state taxation. Yale University vs. New Haven, 71 Conn., 316, 330. When in later years local business came to be carried on by corporations, rather than by individuals or partnerships, a similar rule was applied in taxing such corporations. When banks were first chartered, in 1792, a different rule became necessary as to them, which has since been applied to other corporations of similar character whenever chartered. As the burden of municipal taxation fell on towns, and as the inhabitants of a large number of smaller towns were proportionally less able to bear their burden than those of larger towns,

the legislature sought to give these smaller towns, in the preparation of their tax list, the benefit of all property that could be considered as increasing the ability of their inhabitants to pay; and this desire to relieve small towns from a practically unfair share of burden has influenced our whole system of taxing corporations. While banks were located generally in the larger towns their property was equitably owned by individuals, resident in many other towns, and so, instead of taxing the banks directly, the shares of their stock were treated as distinct personal property and were listed to the individual owners in the towns of their residence." State of Connecticut vs. The Travelers Insurance Company, 73 Conn. Report, 266.

The complaint of the defendant is, that nonresident owners of stock are not taxed in the same manner or to the same amount as residents. If there was a uniform tax on the stock of all residents of Connecticut, and a larger tax was imposed on the stock owned by nonresidents, there might be more color for such a claim, but the fact is not so.

There is no uniformity in the taxation of shares of this company owned by residents of this state. Not only do the assessors of each town or other municipality fix their own valuation of the stock, but each municipality fixes the percentage of tax to be laid upon such value. The city of Hartford, spending money largely for public improvements, lays a tax of twenty or thirty mills on the dollar on such stock owned by a resident, while a smaller town, more economical in spending money, may lay a tax of no more than five or ten mills on the dollar upon the stock held by its residents. The rate may not be the same in any two towns of the State; if it is, it is merely accidental.

This method of taxation renders it absolutely impossible for the same rule to be applied to the taxation of the stock of nonresident owners as to resident owners, because there is no uniform rule as to the latter.

Under these circumstances the only way of taxing the stock of nonresidents was to do as the legislature has done,

to fix a certain definite percentage. That might be more or might be less than the tax on the stock of residents, but it certainly was not "a clear and hostile discrimination" against nonresidents.

But it is said that residents have a deduction made on account of real estate of the company, while nonresidents do not. No doubt the legislature took this difference into consideration in fixing the per cent. of the tax, and considered that, on the whole, that per cent. was as near the average tax paid by residents, after such deduction was made, as it was possible to determine. At any rate, it is not possible for this court in view of the situation to say that it was not so.

Whether the expression "privileges and immunities of citizens of the several states" does or does not include a right of citizens of other states to be taxed in exactly the same manner as citizens of Connecticut on this stock, a question which will be considered hereafter, it clearly appears that the citizens of Connecticut do not have the right of paying a uniform tax upon stock of the defendant company; some of them pay more than others, depending on the place where they reside, the market value of the stock fixed by the assessors, and the amount of tax levied by the municipalities in which they reside. If citizens of Connecticut have no such privilege, it cannot be held that nonresidents holding this stock are deprived of a privilege which citizens of Connecticut have.

2. It is further submitted that even if the case were otherwise it is well settled that equality of taxation is not a privilege or immunity within the meaning of the constitutional provisions referred to.

2. This Court says, in State Railroad Tax Cases, 92 U. S., 575, 612:

> "Perfect equality and perfect uniformity of taxation as regards individuals or corporations or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the sys-

tem which most nearly attains this is the best. But the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect. And when we come to its application to the property of all the citizens, and of those who are not citizens, in all the localities of a large State like Illinois, the application being made by men whose judgment and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfection of human nature and of the evidence on which human judgment is founded."

Concerning the rate of taxation, this Court declares in the case of Adams Express Company vs. Ohio, 165 U. S., 194, 228, as follows:

> "We are also unable to conclude that the classification of express companies with railroad and telegraph companies as subject to the unit rule denies the equal protection of the laws. That provision in the Fourteenth Amendment was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways, nor was that amendment intended to compel a State to adopt an iron rule of equal taxation."

In Tappan vs. Merchants' National Bank, 19 Wallace, 490, 504, this Court says that:

> "Absolute equality in taxation can never be obtained. That system is the best which comes the nearest to it. The same rules cannot be applied to the listing and valuation of all kinds of property. Railroads, banks, partnerships, manufacturing associations, telegraph companies, and each one of the numerous other agencies of business which the inventions of the age are constantly bringing into existence require different machinery for the purposes of their taxation. The object should be to place the burden so that it will bear as nearly as possible equally upon all. For this purpose different systems adjusted with reference to the valuation of different kinds of property are adopted. The courts permit this."

In Pacific Express Company vs. Seibert, 142 U. S., 339, 351, this Court says:

> "This court has repeatedly laid down the doctrine that diversity of taxation both with respect to the amount imposed and the various species of property selected, either for bearing its burdens or for being exempt from them, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of those terms; and that a system which imposes the same tax upon every species of property, irrespective of its nature or condition or class, will be destructive of the principle of uniformity and equality in taxation, and of a just adaptation of property to its burdens."

In Bell's Gap Railroad vs. Pennsylvania, 134 U. S., 232, 237, this Court says:

> "The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the state, in framing their constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject that would

> include all cases. They must be decided as they arise. We think that we are safe in saying that the Fourteenth Amendment was not intended to compel the state to adopt an iron rule of equal taxation."

It is submitted that the method of taxation now complained of, which has existed unchallenged in Connecticut for a generation, is not "a clear and hostile discrimination against particular persons and classes," and especially that it cannot be said to be a discrimination "of an unusual character, unknown to the practice of our governments."

That the above language of the United States Supreme Court represents its matured opinion appears from the late case of Merchants, etc., Nat. Bk. *vs.* Commonwealth of Pennsylvania, 167 U. S., 461, 464. In this case the court says:

> "This whole argument of a right under the Federal Constitution to challenge a tax law on the ground of inequality in the burdens resulting from the operation of the law is put at rest by the decision in Bell's Gap R. R. Co. *vs.* Pennsylvania, 134 U. S., 232."

We are not dealing here with a statute which makes a different rule of taxation for citizens of other states who have come within the State's jurisdiction, from that in force for citizens of Connecticut. Citizens of other states and citizens of the United States who are resident in Connecticut are treated by the statute in question precisely as are citizens of the latter State. They are taxed in the towns of the state where they reside precisely as are our citizens of Connecticut there residing. But so long as the State does not deny to any persons who come within its jurisdiction equal treatment in the matter of taxation with its own citizens similarly situated, its laws are not obnoxious to the Civil Rights Act nor to the provisions of the Constitution of the United States.

> Yick Wo *vs.* Hopkins, 118 U. S., 356, 369.
> State *vs.* Travelers Ins. Co., 70 Conn., 590, 600.

If the citizens of each state are entitled to all the privileges and immunities of the citizens in the several states, and

if no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, it is pertinent to inquire what constitutes "privileges and immunities." This Court has defined what they are. They are said to be the civil rights belonging to all citizens of the State; rights which are general and fundamental.

Corfield *vs.* Coryell, 4 Wash. C. C., 371, 380.
Slaughter House Cases, 16 Wall., 76.
Blake *vs.* McLung, 172 U. S., 239, 248.

In defining the phrase "privileges and immunities," the Supreme Court of the United States has said through Mr. Justice Peckham in the case of Maxwell *vs.* Dow, decided February 26, 1900, that the "cases show the meaning which the courts have attached to the expression, as used in the Fourth Article of the Constitution, and the argument is not labored which gives the same meaning to it when used in the Fourteenth Amendment."

The principle is discussed in Corfield *vs.* Coryell, *supra*, as follows:

"What are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature fundamental; which belong of right to the citizens of all free governments, and which have at all times been enjoyed by the citizens of the several states which compose this Union from the time of their becoming free, independent, and sovereign.

What these fundamental principles are it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads:

Protection by the government; the enjoyment of life and liberty; with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety,

subject, nevertheless, to such restraints as the government may justly prescribe for the general good of the whole."

Corfield *vs.* Coryell, 4 Washington C. C., 371.
Slaughter House Cases, 16 Wallace, page 76.

The constitutional provisions concerning the privileges and immunities secured to citizens of each state in the several states "did not create those rights which it called privileges and immunities of the citizens of the states. It threw around them in that clause no security for the citizen of the state in which they were claimed or exercised. Nor did it profess to control the power of the state governments over the rights of its own citizens. Its sole purpose was to declare to the several states that, whatever those rights as you grant or establish them to your own citizens, or as you limit or qualify or impose restrictions on their exercise, the same neither more or less shall be the measure of the rights of citizens of other states within your jurisdiction."

Slaughter House Cases, 16 Wall., 77.

"Privileges and immunities" are the rights which the State governments were created to establish and secure. Special privileges enjoyed by citizens in their own state are not secured by the provisions of Section 2, Paragraph 1, of Article 4 of the Constitution.

Paul vs. Virginia, 8 Wallace, 168, 180.

The Fourteenth Amendment did not increase the "privileges and immunities" of the citizen of a state; it only gave him an additional guarantee for the protection of those he already had.

Minor vs. Happisett, 21 Wallace, 162, 170. United States vs. Cruikshank et al., 92 U. S. Reports, 542, 552.

Section 2, Article 4, of the Constitution was intended "to confer on the citizens of the several states a general citizen-

ship and to communicate all the privileges and immunities which the citizens of the same state would be entitled to under the like circumstances."

Maxwell vs. Dow, 176 United States Reports, 581, 592.

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

"The meaning and effect of this language in substantial particulars is settled. It is confined to the single purpose of preventing an exercise of the independent power left to each State in favor of its own citizens in respect to their common personal rights as citizens, and against a participation in the same rights by citizens of other states."

State of Conn. vs. The Travelers Insurance Co., 73 Conn. Reports, 272.

The alleged infringement of the rights of a nonresident stockholder in the case at bar is explained when we examine the ground upon which those rights are predicated.

The right so strenuously urged is not a privilege or immunity which springs from his national citizenship. As a citizen of the United States he has certain rights arising from the limitations which the Federal Constitution may have imposed upon the states, but the right that all taxation should be equal and uniform within the jurisdiction of the states is not one of those rights.

It must therefore be conceded that, if he does not possess this right purely as a citizen of the United States, the provisions of the Fourteenth Amendment of the Federal Constitution which prohibits any state from abridging the privileges or immunities enjoyed by him as such citizen do not accord to him the immunity which he now claims.

He invokes the aid of the Fourteenth Amendment as a citizen of the United States when the rights which he alleges to have been infringed are not based upon national citizenship.

Maxwell vs. Dow, 176 U. S. Reports, 595, 596.

In the above case an information was filed by a prosecuting attorney in Utah charging the accused with robbery; he was tried before a jury composed of eight jurors and was sentenced to imprisonment. He subsequently applied to the Supreme Court of Utah for a writ of habeas corpus, alleging among other things that his imprisonment was unlawful, because he was prosecuted under an information instead of by an indictment by a grand jury, and was tried by eight instead of twelve jurors.

He claimed that as a citizen of the United States his privileges and immunities as such citizen, and granted him by the Constitution, were and had been abridged. The proceeding by information, and also the trial by a jury of eight instead of twelve, were provided for by the Utah Constitution.

The Supreme Court of the State denied the petition for habeas corpus and an appeal was taken to the Supreme Court of the United States, which affirmed the decision of the Court of Utah.

The case discusses at some length the meaning of the words "privileges" and "immunities" as used in the Constitution, and traces the source from which the phrase originated, reaching the conclusion that they are in their nature fundamental, and that they may all be comprehended under the following heads:

"Protection by the government—the enjoyment of life and liberty, with the right to acquire and possess property of every kind and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole."

Continuing this discussion the few expressed limitations which the Federal Constitution imposes upon the States are declared to be such as the prohibition against the ex post facto laws, bills of attainder, and laws which impair the obligation of a contract.

After illustrating the nature of these limitations the opinion of the Court, continuing the discussion, says: "But

with the exception of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States, and without that of the Federal Government."

"Was it the purpose of the Fourteenth Amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned from the States to the Federal Government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States? All this and more must follow if the proposition of the plaintiff in error be sound. For not only are these rights subject to the control of Congress whenever in its discretion any of them are supposed to be abridged by State legislation, 'but that body may also pass laws in advance, limiting and restricting the exercise of legislative power by the States in their most ordinary and useful functions as in its judgment it may think proper on all such subjects.'"

It was suggested in the discussion that such a course might constitute the Supreme Court of the United States "a perpetual censor upon all legislation of the States."

In the above discussion the opinion quotes largely from previous cases in which Mr. Justice Washington and Mr. Justice Miller wrote the opinion.

Maxwell *vs.* Dow, 176 U. S. Reports, 589, 590.

The Travelers Insurance Company is a corporation chartered by the State of Connecticut. Its power to do business along the peculiar lines incident to its purpose emanates from the authority given it by the legislature. It is a creature of the State and exercises its privileges thereby. All this is admitted, but the contention is made that citizens

of other States and of the United States, by reason of their residence, are deprived of certain privileges. They are however in no true sense deprived of any privilege or abridged of any immunity; a benefit lost or gained may be simply an incident of residence. They chose to live in one State and possess property interests in another. In accepting property rights or interest in the State of Connecticut they place themselves voluntarily under the jurisdiction of the State and under the provisions of its laws.

The discrimination, if any exists, is therefore not a hostile one but a mere "incident of legitimate taxation."

The Court in discussing the question of depriving the owner of his property without due course of law, makes a significant statement that the judgment "may violate some provisions of the State Constitution against unequal taxation, but the Federal Constitution imposes no restraints on the States in this regard."

Davdison *vs.* New Orleans, 96 U. S. Report, 105.

If this be sound and in accord with existing law, then neither Article 4 nor the Fourteenth Amendment of the Constitution secures to citizens of the several States or of the United States, absolute uniformity in taxation.

The decisions which hold that the Federal Constitution imposes no such restraint upon the States are based upon the experience which teaches that absolute and exact uniformity and equality in the system of taxation is a positive impossibility.

It is admitted that in the assessment and collection of taxes absolute uniformity and equality cannot be attained. This is apparent in the attempt to tax shares of a National Bank in a given case where its share-holders are residents of different States.

"It is said to be a violation of the constitutional rule of uniformity to compel the owner of a bank share to submit to taxation for this part of his property at a place other than

his residence because other residents are taxed for their personal property where they reside.

"It is a sufficient answer to this proposition to say that all persons owning the same kind of property are taxed as he is taxed."

Tapan *vs.* Merchants National Bank, 19 Wallace, 504.

There is no equal and uniform clause concerning taxation contained in the Constitution of Connecticut. A large number of the States have constitutions containing such a provision. It is now contended that the Fourteenth Amendment supplies such a deficiency, and by implication therefore all taxation is to be uniform and equal, and that thereby the power of taxation is limited. There is, however, no such provision in the Constitution of the United States affecting or limiting the powers of the State in its enactment or enforcement of its laws of taxation. "One of the most satisfactory answers to the argument that the uniformity required by the Constitution is the same as the equal and uniform clause which has since been embodied in so many of the State constitutions results from a review of the practice under the constitution from the beginning.

"From the very first Congress down to the present date in laying duties, imposts, and excises, the rule of inherent uniformity, or in other words, intrinsically equal and uniform taxes, has been disregarded, and the principle of geographical uniformity consistently enforced.

"Take, for a general example, specific import duties, by which particular specific rates are imposed on enumerated articles without reference to their value.

"It is manifest that all such duties are void if intrinsic equality and uniformity be the rule; and yet in all the great controversies which have arisen over the policy of impost duties generally, and particularly as to the economic wisdom of specific duties, never has it been contended that the power

to impose them did not exist because of the uniformity clause of the Constitution."

Knowlton vs. Moore, U. S. Supreme Court Report. 178 United States Reports, 41, 92–93.

"Taxes, to be both uniform and equal, affecting each inhabitant in proportion to his ability to contribute, can only be devised by a government unhampered by the limitations of humanity. With the complications of civilized society, the stress of taxation is not, and cannot be, confined to the individual who pays the tax; its ramifications are widespread and hidden."

State of Conn. vs. The Travelers Insurance Co., 73 Conn. Reports, 261.

"Direct taxes shall be apportioned among the several states which may be included within this union, in proportion to the census directed to be taken. By this positive mandate any rule of equality in laying direct taxes is rendered impossible. The citizens of different states, if thus taxed at all, must be taxed unequally. 'All duties, imposts, and excises shall be uniform throughout the United States.' This mandate is plainly geographical, demanding uniformity of rate in all places, but not uniformity of operation, and practically forbids the effort to secure uniformity of operation in laying indirect taxes. And so by force of specific commands the theory that equality and uniformity are essential to taxation is ignored."

Ibid., page 263.

The simple fact that a tax is excessive, or that it may bear more heavily upon one class of corporations than upon another, does not thereby render the same unconstitutional.

Veazie Bank vs. Fenno, 8 Wall., 533–548.

The question concerning the right of a state government to classify for the purposes of taxation and to make discrimi-

nations in the operation of the taxing law, based upon reasonable grounds, is discussed by this Court in the case of the American Sugar Refining Company vs. the State of Louisiana, decided November 5, 1900.

179 U. S. Supreme Court Reports, 89, 94.

It was there contended that the State of Louisiana by a provision of its constitution, followed by an enactment of the General Assembly, denied to the defendant the equal protection of the laws, "inasmuch as said act did not impose equally a license tax upon all persons engaged in the business of refining sugar and molasses, but discriminates in favor of planters who refine their own sugar and molasses, and in favor of planters who granulate syrups for other planters during the rolling season."

The trend of the opinion demonstrated that the law in question was not unconstitutional, because the discrimination was not "purely arbitrary, oppressive or capricious, and made to depend upon differences of color, race, nativity, religious opinions, political fluctuations or other considerations having any possible connection with the duties of citizens as taxpayers."

It was pointed out that Congress had acted upon the principle which was the objectionable feature of the Louisiana statute, and that an incidental discrimination based upon reasonable grounds in a tax law which had for its purpose the providing of expenses of the government was not unconstitutional.

In a discussion it lays down the principle that if the law chooses "it may exempt certain classes of property altogether; may impose different specification classes upon different trades or provisions; may vary all rates of excise upon various products; may tax real and personal estate in a different manner; may tax visible property only and not securities; may allow or not allow deductions for indebtedness.

"All such regulations and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature or the people of the State in framing their constitution."

The contention of the plaintiff in error in the present controversy is that a deduction is not allowed a resident of a sister State which is allowed a resident of Connecticut for the purpose of assessment and taxation.

In the case quoted a deduction for the purposes of assessment and taxation may be allowed for indebtedness. In the case at bar a deduction is allowed for such purpose of so much of the capital stock as is "invested in real estate on which it is assessed and pays a tax."

It is entirely proper that that part of the real estate invested in capital and which of itself pays a tax should be exempted from further taxation. All persons coming to reside within the State of Connecticut partake of the privileges of the State law, but it is submitted that nonresidents who acquire property of or an interest in a Connecticut corporation take such property subject to any restriction or limitation which the sovereign State sees fit to impose with its grant of power.

RECAPITULATION.

1. The law whose constitutionality is now under discussion has been in force for more than thirty years.

2. There is no express provision contained in the State constitution that taxation shall be uniform and equal.

3. The United States Constitution does not by the Fourteenth Amendment thereto supply such an omission.

4. "There is no fundamental principle of free government or natural justice that all taxation shall be uniform and equal."

5. Non-residents who acquire property in a Connecticut corporation take the same subject to the limitation and restrictions imposed with the grant of power.

6. "Privileges and immunities" bear the same interpretation as expressed in paragraph 1, section 2, Article 4, as in the Fourteenth Amendment of the Constitution.

7. "Privileges and immunities" are the civil rights which are general and fundamental.

8. They were not increased by the Fourteenth Amendment but were additionally guaranteed thereby.

9. The Constitution does not add to those already enjoyed by the citizens of the several states.

10. Equality and uniformity of taxation is not required or practiced except geographically by the United States government.

11. Absolute uniformity and equality in the process of taxation is impossible and therefore not made imperative by our fundamental law.

12. Citizens of Connecticut have no privilege or right to uniform taxation upon the stock in question.

13. An approximation to this standard is all that is expected.

14. Only a hostile discrimination will be condemned.

15. The present discussion turns upon an incident of taxation and residence and therefore cannot be said to be hostile in discrimination.

CHARLES PHELPS,
Attorney-General for State of Connecticut.

Supreme Court of the United States.

No. 219.—October Term, 1901.

The Travelers' Insurance Company, Plaintiff in Error, *vs.* The State of Connecticut.	In error to the Supreme Court of Errors of the State of Connecticut.

[May 5, 1902.]

Section 2 of chap. 153 of the Public Acts of Connecticut, passed in 1897, reads as follows:

"The cashier or secretary of each corporation whose stock is liable to taxation, and not otherwise taxed by the provisions of this title, shall, on the first day of October, annually, or within ten days thereafter, deliver to the comptroller a sworn list of all its stockholders residing without this State on said day, and the number and market value of the shares of stock therein then belonging to each; and shall on or before the twentieth day of October, annually, pay to the State one and one-half per centum of such value; and if any such cashier or secretary shall neglect to comply with the provisions of this section he shall forfeit to the State one hundred dollars, in addition to said one and one-half per centum so required to be paid."

This method of assessment and taxation of non-resident stockholders in insurance corporations has been in force in Connecticut since 1866, although at first the rate of tax was only one per cent. (Public Acts, 1866, chap. 29.)

By section 1 of chap, 50 of the Public Acts of 1899 it is provided:

"Section 1923 of the General Statutes is hereby amended to read as follows: When not otherwise provided in its charter, the stock of every corporation shall be personal property, and be transferred only on its books, in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock owned by any person therein, for all debts due to it from him; and any corporation desiring to enforce such lien may give notice to such stockholder, his executor or administrator, and if there be none, his heir-at-law, that unless he shall pay his indebtedness to said corporation within three months it will sell said stock; and such corporation may prescribe by its by-laws the manner of giving notice required by this section, but the notice of sale shall in no case be given until the liability has become fixed."

The original section in the General Statutes, enacted in 1888, is precisely the same as the first half of the amended section, and secured to the corporation a lien upon the stock for debts due to it by the stockholder, the

amendment consisting in the addition of the last half, which provides the method of enforcing such lien.

Section 3836 of the General Statutes, as amended by chap. 63 of the Public Acts of 1889, reads:

"SEC. 3836. Shares of the capital stock of any bank, national banking association, trust, insurance, turnpike, bridge or plank road company, owned by any resident of this State, shall be set in his list at its market value in the town in which he may reside; but so much of the capital of any such company as may be invested in real estate, on which it is assessed and pays a tax, shall be deducted from the market value of its stock, in its returns to the assessors."

This action was commenced by the State of Connecticut to recover of the Travelers' Insurance Company, under the first of the statutes quoted, taxes due for the year 1898, from non-resident stockholders. The defendant answered, alleging that its capital stock consisted of 10,000 shares, of which 8,201 were owned by residents and 1,799 by non-residents of the State; that it was the owner of a large amount of real estate on which it had been assessed and had paid a tax, and adding these averments:

"7. The market value of the stock of the defendant company on the 1st day of October, 1898, was $250 per share.

"8. All of the said resident owners of said stock were assessed upon the stock owned by them respectively on the first day of October, 1898, at an assessed valuation equal to the said market value of said stock less a large deduction therefrom by reason of the company's said investments in real estate.

"9. The amount per share sought to be collected from the defendant in this action as a tax upon the stock owned by said non-resident shareholders is far in excess of the amount per share paid and required to be be paid as a tax by the several resident shareholders aforesaid on the stock owned by them on the said 1st day of October, 1898."

A demurrer to this answer was sustained and judgment entered for the State, which was affirmed by the Supreme Court of the State, (73 Conn. 255,) and thereupon the case was brought here on error.

Mr. Justice BREWER delivered the opinion of the Court.

The single question presented for our consideration is whether this legislation of the State of Connecticut in respect to the taxation of the shares of stock in a local corporation held by non-residents is in conflict with paragraph 1 of section 2 of article IV. of the Federal Constitution, or the Fourteenth Amendment thereto. It is alleged that there is such discrimination between resident and non-resident stockholders as works a denial of the equal protection of the laws, and to the prejudice of citizens of other States. The stock of the non-resident stockholder is assessed at its market value without any deduction on account of real estate held by the corpora-

tion. The stock of the resident stockholder is assessed at its market value, *less the proportionate value of all real estate* held by the corporation upon which it has already paid a tax. As thus stated, there would appear to be a wrongful discrimination, and that the non-resident stockholder was subjected to a larger burden of taxation than the resident stockholder, and this not as a result of the action of any mere ministerial officers in making assessments, but by reason of the direct command of the statute to include the real estate in the valuation in the one case and to exclude it in the other.

But this apparent discrimination against the non-resident disappears when the system of taxation prevailing in Connecticut is considered. By that system the non-resident stockholder pays no local taxes. He simply pays a State tax, contributes so much to the general expenses of the State. While, on the other hand, the resident stockholder pays no tax to the State, but only to the municipality in which he resides. In other words, the State imposes no direct taxes for its benefit upon the property belonging to residents, but collects its entire revenue from corporations, licenses, &c. The rate of State tax upon the non-resident stockholder is fixed, fifteen mills on a dollar, applying equally to all, while the rate of local taxation varies in the several cities and towns according to the judgment of their local authorities as to the amount necessary to be raised for carrying on the municipal government. Obviously the varying difference in the rate of the tax upon the resident and the non-resident stockholders does not invalidate the legislation. How then can it be that a difference in the basis of assessment is such an unjust discrimination as necessarily vitiates the tax upon the non-resident? The resident stockholder does not pay the fifteen mills to the State which is demanded of the non-resident, and the non-resident stockholder does not pay to any locality the sum, greater or less than fifteen mills, which may be imposed by the authorities of that locality. In respect to this the Supreme Court, in its opinion, said (p. 281):

"It is unnecessary to consider whether, or under what circumstances, the limitations imposed by a State in respect to the mutual relations of members of its corporations in the matter of taxation may transform legislation for that purpose into a denial of rights secured to citizens of other States; it is enough for present purposes that a mere inequality in the stress of taxation cannot produce that effect.

"But the claim that in this case the inequality operates against non-residents or citizens of other States as a class is unfounded. While the admissions of the demurrer assume the tax in respect to the defendant for this year to bear more heavily on non-residents than on residents, the general effect of the law is matter of common knowledge. The average rate of taxation for municipal purposes for the 168 towns approximates fifteen mills, which is the rate for the special tax imposed in respect to non-resident shares; but the average rate for municipal taxation in the

ten larger towns (representing much more than half the grand list of the State) is about twenty-one mills. The clear purpose of the legislature in fixing the mode of valuation for the property subject to a single rate for special taxation and the valuation for the property subject to widely varying rates for municipal taxation, was to approximate a general equality in the burden that should fall on the two classes of property; and it well may be that the rule objected to in respect to the valuation of the interests of resident shareholders in corporations investing in taxable land still leaves, as a whole, a lighter burden of contribution resting upon non-resident shareholders."

In other words, the State, dealing with the question of taxation of the shares of stock in a local corporation, found two classes; one, shares held by residents, and the other, those held by non-residents. It was believed that a resident in a city or town, enjoying all the benefits of local government, should be taxed for the expenses of that government upon all the property he possessed, whether that property consisted in part or in whole of shares of stock. On the other hand, the non-resident, enjoying little or none of the benefits of local government, was exempted from taxation on account of the expenses of such local government. At the same time it was not right that he should escape all contribution to the support of the State which created and protected the corporation and the property of all its stockholders, and so a tax was cast upon the non-resident stockholder for the expenses of the State. This, with kindred taxes, has been found sufficient to pay the running expenses of the State government. The resident is not called upon to pay any of the expenses of the State, but only to bear his proportional share of those of the municipality. The non-resident is called upon to pay no share of the expenses of the municipality, but only to contribute to the support of the State.

The legislature, with these inequalities before it, aimed, as appears from the opinion of the Supreme Court, to apportion fairly the burden of taxes between the resident and the non-resident stockholder, and the mere fact that in a given year the actual workings of the system may result in a larger burden on the non-resident was properly held not to vitiate the system, for a different result might obtain in a succeeding year, the results varying with the calls made in the different localities for local expenses. If it be said that equality would be secured by imposing upon the resident stockholder a uniform tax for local purposes of fifteen mills, without any reduction on account of real estate held by the corporation, a gross inequality might result in many towns between the resident stockholder and other taxpayers of that locality, in that they might be called upon to pay much more than he. On the other hand, if it be contended that inequality might be avoided by holding the situs of non-resident stockholders to be that of the city in which the corporation has its principal office, (in this case Hartford,) then unjust discrimination

between that city and other localities would follow, in that to the one was given the total benefit of property which in fact belonged to parties living outside of the State. So, while there may result from year to year a variance in the amount of the burden actually cast upon non-residents as compared with that cast upon residents, yet it is also true that a like inequality will exist between residents of different localities in the State by reason of the different rates of taxation in those localities. You cannot put one resident against one non-resident stockholder and by a comparison of their different burdens determine the validity of the legislation any more than you can place a stockholder resident in one municipality over against a stockholder resident in another municipality, and by comparison of their different burdens determine the validity of the tax law in respect to resident stockholders. It does not seem possible to adjust, with unerring certainty, all the varying burdens which grow out of the fact that some of the stock of the various State corporations is held outside of the State and some within the State, and the latter in separate municipalities with different rates of taxation.

It may also be said that apparently equality would be more certainly secured by making the assessment in each case upon the market value of the stock, diminished by the value of the real estate upon which taxes have been paid. But here again a difficulty is presented. Many of the taxable corporations own no real estate, and much of the real estate which belongs to corporations who have investments therein is located outside of the State. According to the returns made by this particular corporation, out of a holding in real estate amounting in value to $1,778,662.05, upon which it had paid taxes, that which was situated in Connecticut was valued at only $137,965.81. Now, it may be true that as to the real estate held outside of the State the title and possession of the corporation are protected not by Connecticut but by the State in which such real estate is found. But can it be said that there was any unjust discrimination between the different non-resident stockholders in the various corporations, or even between all the non-resident and resident stockholders, when the State, ignoring this matter of real estate, and considering that the corporation as a State institution was protected in all its corporate rights by the State, provided that non-resident stockholders should pay upon the market value of their investments in the property of that corporation? In respect to this the Supreme Court of Connecticut said (p. 280):

"This change as to the valuation of the property and franchise of a corporation owning taxable real estate, for the purposes of municipal taxation, may produce in some instances more inequality, may be uncalled for or unwise (upon such considerations the action of the legislature is conclusive), but it certainly does not transmute the legislation in question from permissible taxation to a denial to citizens of other States of that common right in the use and enjoyment of property secured to our own

citizens. The plan of taxation remains the same; after the change in valuation as before, it is simply a mode of securing to towns for purposes of municipal taxation the benefit of that part of the corporate property represented by shares owned by their inhabitants, and subjecting to State taxation that part represented by shares owned by non-residents, and which cannot be thus subjected to municipal taxation. Here is no hidden purpose to attack the rights of citizens of other States—no evidence that the underlying intention and real substance of the legislation is to hinder citizens of other States in acquiring and holding property. The alleged hindrance is confined to those who buy stock in corporations paying taxes on real estate. Only a small number of the corporations within the scope of the act own taxable real estate to any appreciable amount. Can it be said that the law regulating the taxation of half a dozen different kinds of corporations is really intended to hinder citizens of other States from owning stock in the small number of these corporations that may from time to time invest in taxable real estate; or, that the real substance of the law changes from legitimate taxation to hostile and forbidden discrimination with each change of its investments by a corporation? Clearly the legislature is free from any sinister motive in this legislation."

But further, the validity of this legislation does not depend on the question whether the courts may see some other form of assessment and taxation which apparently would result in greater equality of burden. The courts are not authorized to substitute their views for those of the legislature. We can only consider the legislation that has been had, and determine whether or no its necessary operation results in an unjust discrimination between the parties charged with its burdens. It is enough that the State has secured a reasonably fair distribution of burdens, and that no intentional discrimination has been made against non-residents.

This court has frequently held that mere inequality in the results of a State tax law is not sufficient to invalidate it. Thus, in *Tappan* v. *Merchants' National Bank*, (19 Wall. 490, 504,) it was said:

"Absolute equality in taxation can never be obtained. That system is the best which comes the nearest to it. The same rules cannot be applied to the listing and valuation of all kinds of property. Railroads, banks, partnerships, manufacturing associations, telegraph companies, and each one of the numerous other agencies of business which the inventions of the age are constantly bringing into existence, require different machinery for the purposes of their taxation. The object should be to place the burden so that it will bear as nearly as possible equally upon all. For this purpose different systems adjusted with reference to the valuation of different kinds of property are adopted. The courts permit this."

Again, in *State Railroad Tax Cases*, (92 U. S. 575, 612):

"Perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect. And when we come

to its application to the property of all the citizens, and of those who are not citizens, in all the localities of a large State like Illinois, the application being made by men whose judgments and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfection of human nature and of the evidence on which human judgment is founded."

And in *Merchants' Bank* v. *Pennsylvania*, (167 U. S. 461, 464):

"This whole argument of a right under the Federal Constitution to challenge a tax law on the ground of inequality in the burdens resulting from the operation of the law is put at rest by the decision in *Bell's Gap R. R. Co.* v. *Pennsylvania*, (134 U. S. 232.)"

For these reasons we are of opinion that the act challenged cannot be held to conflict with either of the clauses of the Federal Constitution referred to, and the judgment of the Supreme Court of Connecticut is

Affirmed.

Mr. Justice HARLAN did not hear the argument and took no part in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.